

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

May 23-24, 2009

SEATTLE, WA

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SUNDAY, MAY 24, 2009

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:40 a.m.

Sunday, May 24, 2009

Emerald II Room

The Red Lion on Fifth Avenue

Seattle, WA

COMMITTEE MEMBERS PRESENT:

Mr. Colin Kippen, Chair

Ms. Sonya Atalay

Mr. Alan Goodman

Mr. Eric Hemenway

Mr. Dan Monroe

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1 **CALL TO ORDER**

2 COLIN KIPPEN: Good morning. Good morning to
3 all of you. I'd like to call the NAGPRA Review
4 Committee meeting to order. This is our second of
5 two days of meetings. We will have some business
6 this morning and then we will be open for comments.

7 But before we begin, I'd like to ask committee
8 member Eric Hemenway to open this meeting for us
9 with a blessing.

10 **INVOCATION**

11 ERIC HEMENWAY: (Native American language.)

12 I said *miigwetch* to (Native American language)
13 for having everybody come here. In our language we
14 always say there's no Great Spirit or one spirit, we
15 say the Lead Spirit. And that's what I feel we need
16 to do is like lead with what we're doing by examples
17 and good work so we can accomplish what we need to
18 accomplish.

19 And I'd like to say *miigwetch*, thank you in our
20 language, to the tribes who occupy this area and
21 acknowledge them because this was their home first,
22 and I say *miigwetch* for everybody on the NAGPRA
23 Program and for the Review Committee and everybody
24 in attendance. (Native American language.)

25 **WELCOME**

1 COLIN KIPPEN: Good morning, committee members,
2 good morning, staff, and good morning, all of you
3 who have come to be with us on the second day of our
4 two days of meetings.

5 Mr. Tarler.

6 DAVID TARLER: Good morning. Mr. Chairman, on
7 our agenda today we have a presentation and then we
8 have time for public comment and several members of
9 the public have come up to me and have asked that
10 they be placed on the agenda to make public
11 comments.

12 Before we begin with our presentation, Sherry
13 Hutt, the Manager of the National NAGPRA Program,
14 has a question for the committee.

15 **NOMINATIONS FOR AT-LARGE MEMBER - CONT'D**

16 SHERRY HUTT: I just have one matter that I'd
17 like to clarify from yesterday if we might, and that
18 deals with the nominations to the Secretary by the
19 Review Committee for that seventh member. And I
20 want to ask counsel, can someone who is otherwise
21 duly appointed but has not filled out their forms
22 that are predicate to serving each year, the May 15
23 forms, can they serve in a meeting?

24 STEPHEN SIMPSON: From what I can tell from the
25 charter and the rules for special government

1 employees, no.

2 SHERRY HUTT: And Mr. DFO, do you have the forms
3 from the absent member?

4 DAVID TARLER: I do not.

5 SHERRY HUTT: And I'd like to ask the committee
6 if you would, if you might consider resolving the
7 issue of the nominees for that at this time because
8 the only four people who are duly appointed and
9 having filled out their forms are sitting right here
10 today. If - and you were asked by the DFO to
11 circulate the resumes of the nominees prior to the
12 meeting and you did so, and you've discussed four
13 names and you have the resumes of those four people.
14 And I'm asking if you might reconsider yesterday's
15 determination and consider consensus on those four
16 names so that we might in the program put those
17 names together for the Secretary.

18 The reason I say this, and again in the spirit
19 of openness and candor there were some questions
20 here as to what was done in between meetings between
21 the National NAGPRA Program and the Review
22 Committee, and I want to be totally candid, totally
23 transparent as we always have been. And that is
24 that that seventh member's term will expire in 60
25 days. It takes about 90 days in a normal process to

1 have the name vetted through the process in the
2 White House and obtain the Secretary's signature.
3 It is the National NAGPRA Program's obligation to
4 staff this committee and to serve it such - in many
5 ways, one of which is to make certain that we have a
6 fully duly-constituted panel available to be at
7 meetings at each - at each juncture.

8 And if you're not comfortable and you'd like me
9 to pursue obtaining those forms from the absent
10 member and schedule the telephone conference that
11 you talked about in the future, that's - I mean, we
12 will go with your wishes, but then I would like some
13 parameters of time as to how long we should pursue
14 the matter before we set up the telephone conference
15 that enables you to put together the list that we
16 can then get to the Secretary, because any delay
17 that will keep us from getting that list moving
18 forward dims the possibility that you have a seventh
19 member for your next meeting, which is now set in
20 October in Sarasota, or to do the business of the
21 meeting, the planning business that goes on.

22 And I don't want anyone at any time, and I do -
23 I work for the National Park Service and I'm
24 responsible to the Secretary, and I don't want
25 anyone at any time to think that the National NAGPRA

1 Program was recalcitrant in getting those
2 nominations to the Secretary such that in due course
3 an appointment could be made and you could be fully
4 constituted. So I seek your desires and your
5 guidance and your direction this morning.

6 COLIN KIPPEN: Thank you for your comments. I
7 have some concerns about what you've just raised,
8 and I need to be, again, open and transparent as
9 well. The forms that we were supposed to fill out,
10 if any of you are on the committee, what you will
11 know is that those - that request came from the -
12 came to us I believe on May 13th. The forms were
13 due on May 15th. And in fact I attempted to meet
14 those requirements on May 15th by going online to
15 the government agency that has these forms, and
16 their website crashed and I could not get the forms.
17 And I spent most of the 15th filling out those forms
18 and I did complete those forms and I have them. And
19 the DFO, Mr. Tarler, has allowed us to transmit
20 those forms through him to our Designated Federal
21 Officer and I believe it's Ms. Glicker-Moran. Is
22 that her name?

23 DAVID TARLER: Gicker.

24 COLIN KIPPEN: Gicker-Moran.

25 DAVID TARLER: Moran-Gicker.

1 COLIN KIPPEN: So the idea that - or I guess the
2 concern that we need to move forward and essentially
3 remove a member from this committee who has not
4 complied with this form-filing requirement, in light
5 of the circumstances surrounding the way those forms
6 were transmitted to us, to me is not fair. And I
7 also am under the impression and I've been informed
8 by Ms. Hutt that Donna Augustine is, in fact, not
9 well and in fact has a sick child that she is caring
10 for. I am - this is just hearsay information given
11 to me but I am concerned about removing a member of
12 this committee from being able to participate in
13 light of these circumstances.

14 SHERRY HUTT: Mr. Chairman, I'm not suggesting
15 that she be removed from the committee, only that we
16 deal with the business with those who are able to
17 conduct business. And since I'm the one that had
18 direct contact, I can tell you that those forms can
19 be turned in - can be handwritten and sent in, and
20 she and I have had - in other paperwork in
21 preparation for her travel here, things have gone
22 back and forth. So we've had pretty constant
23 conversation over the last two weeks leading up to
24 it and she had some issues with the forms. Now if
25 she chooses to fill out those forms, fine; if not,

1 we'll deal with that in due course. And I don't
2 think we should extend that conversation here in
3 public on her -

4 COLIN KIPPEN: Is she - but if you say that
5 she's - that we need to go forward with a
6 deliberative process that does not include her, is
7 she not then being removed from this committee?

8 SHERRY HUTT: If you would like - if you would
9 like to wait until she has full opportunity to deal
10 with those forms and submit them, then I ask you - I
11 ask your guidance, how long you would like me to
12 deal with that issue before we schedule a telephone
13 conference? I'm fine with whatever your guidance
14 is. I just don't want anyone to ever think that the
15 National NAGPRA Program was recalcitrant in getting
16 those names to the Secretary in time for the next
17 meeting. I mean, I'll work with it, whatever - you
18 know, whatever parameters you want.

19 COLIN KIPPEN: What I - what I would expect and
20 what I would suggest is that we move as quickly
21 forward with this telephonic meeting and I - again,
22 I'm not aware of what Ms. Augustine's present
23 circumstances are. I've not had any contact with
24 her. But I am concerned that a Native member of
25 this committee be in any way not able to participate

1 or be prevented from participation. Obviously there
2 are things that need to be accomplished, but I can
3 just tell you from my own perspective that there
4 were some extenuating circumstances to being able to
5 get the information to Mr. Tarler and to Ms. Gicker-
6 Moran. So I think it needs to be part - we need to
7 have a fair and open process.

8 The other thing I would suggest is that can we
9 do this within two weeks? Is it possible for us and
10 perhaps what you could do, Ms. Hutt, is just inform
11 us, use due diligence to attempt to contact her.

12 SHERRY HUTT: I can tell you that over the last
13 three days I have called the three numbers that I
14 have for her and emailed at the email addresses and
15 tried contact at her friend in Maine with whom she
16 often stays, and I've had no response in the last
17 three days.

18 DAN MONROE: Mr. Chair?

19 COLIN KIPPEN: Yes.

20 DAN MONROE: I suggest that - I understand that
21 - exactly the intent of the - bringing to our
22 attention. I think there's a concern on a number of
23 us - the part of a number of us that we really don't
24 wish to remove someone from this important
25 consideration. On the other hand, there's a concern

1 in moving forward in a timely manner.

2 If there are issues pertaining to the filling
3 out of the form that Ms. Augustine has and she opts
4 for whatever reason not to do so quickly or to
5 proceed to finish those forms, there's really
6 nothing we can do about that. But I think that what
7 I would suggest is that we set a time limit, I think
8 that it's fair to say a week to obtain those forms,
9 that we set - we make a commitment among ourselves
10 to find a time for a teleconference call within the
11 next 10 to 12 days, no longer than 12 days, and that
12 we carry out this important discussion, hopefully
13 with Ms. Augustine's involvement at that time. If
14 she opts not to finish the forms or get them in on
15 time then we will have created the opportunity for
16 her to do so and we will still be not that distant
17 in terms of the time difference between resolving
18 this matter now and resolving it 10 to 12 days from
19 now.

20 COLIN KIPPEN: I think that's a good approach.
21 The question that I have is what is the implication
22 in terms of her long-term involvement? If she don't
23 have the form in, is she not able to participate?
24 Is she no longer a member of this committee? What
25 is the long-term implication? And the reason I'm

1 asking this question is I think she's an important
2 member. She's a Native religious leader who is part
3 of our committee, and I think that her voice is
4 really an important voice to have on the committee.
5 So I - this is a legal question I'm asking
6 Mr. Simpson or the DFO, you can delegate the
7 response to me. Mr. Simpson?

8 STEPHEN SIMPSON: Yes, Mr. Chairman. The
9 charter of the committee specifically says all
10 members will comply with applicable ethics rules and
11 regulations. Part of compliance with applicable
12 ethics rules and regulations for special government
13 employees is filing this form. This is not unusual
14 for any government employee. I have been filing
15 these forms for years.

16 The - so there would be some question as to
17 whether - whether Ms. Augustine could stay as a
18 member of the committee without filing the ethical -
19 without fulfilling the ethical rules. We would have
20 to - I would have to check with the ethics people in
21 the Department to make sure of that.

22 There is also the provision in the charter for
23 a member who fails to attend substantive - two
24 successive meetings of the committee or otherwise
25 fails to substantively participate in the work of

1 the committee that person may be removed from the
2 committee by the Secretary. I am not alleging that
3 Ms. Augustine has done either one of those things.
4 This is the first meeting that she has missed as my
5 knowledge since she has been appointed. And she has
6 certainly participated heavily in the substantive
7 work of this committee. But it does have to - we do
8 have to think about this.

9 ALAN GOODMAN: Colin, can I - thank you. First,
10 I want to thank Dan for his compromise. I think
11 that to me sounds very workable and due diligence
12 within due time. I had sort of a tangential
13 question for Sherry about the vacant seat, and I
14 know this is guesswork, but do you have any sort of
15 educated guess as to when that seat might be filled
16 or a range of -

17 SHERRY HUTT: We were trying so hard to get it
18 before this meeting and it could happen within this
19 coming week.

20 ALAN GOODMAN: And you know, part of the reason
21 I ask, of course, is that that's another Native
22 American-Hawaiian organization seat, and it would be
23 nice for sort of questions of balance and otherwise
24 to have that person as part of this deliberation.
25 But if it - I would also just add that if that isn't

1 going to happen within a week or so, we shouldn't
2 hold up the process.

3 DAN MONROE: Mr. Chair, also just to put it on
4 the record, while each of us is appointed as a
5 representative - by, not as a representative, by
6 different groups, either museum, scientific and so
7 on groups or by federally recognized tribes or
8 Native Hawaiian organizations, once we become
9 members of the Review Committee we have a shared
10 group responsibility for implementation of the law.
11 And the Review Committee does not function as a
12 legislature. In other words, we're not here to
13 specifically represent one interest or another.
14 We're here to bring our expertise to the table and
15 to oversee and help implement NAGPRA. So it becomes
16 very important and it's part of the tradition of
17 this Review Committee to function together as a
18 group, and that's why at least, I think, most of the
19 members of the committee, if not all, are recoiling
20 from what is otherwise a very logical suggestion.

21 I would add to the suggestion I made earlier
22 that if you are not able to reach Ms. Augustine
23 within the time that we've prescribed we will move
24 forward. In other words, we will dedicate this
25 amount of time to allow her, given the

1 circumstances, to decide what she wants to do about
2 the forms to get them in to you, which can be done I
3 think online sometimes, and - or otherwise get them
4 to you. And we'll proceed on this schedule so that
5 we, in fact, are able to fulfill the important
6 requirement of moving this forward in a timely
7 manner. But I just think it's important to explain
8 why the committee is responding as it is.

9 SHERRY HUTT: And then if the new person
10 receives notice from the Secretary, might we step
11 back a few more days to make sure that that person
12 is then involved -

13 DAN MONROE: Yeah.

14 SHERRY HUTT: - and has time to look at the
15 resumes and come up to speed.

16 COLIN KIPPEN: My concern is really that what we
17 are - let me start again. I wholeheartedly agree
18 with everything that Dan - Mr. Monroe and
19 Mr. Goodman have said about this issue. My concern
20 is that when I asked Mr. Simpson about the
21 requirement it wasn't clear to me whether or not
22 there were any sanctions that were clearly stated
23 that should apply in this situation. And so my
24 concern is that we act fairly with respect to this -
25 to Ms. Augustine.

1 My recollection about the way this committee
2 has operated in the past, at least during my tenure
3 on the committee, is that we had one individual who
4 was able - who had missed more than two meetings and
5 continued service on this committee because of
6 extenuating health issues. And that person was
7 allowed to continue. And again, it goes to that
8 question of the meaning of the word "may." We may
9 do one thing. We may do another thing. So clearly
10 it is a matter of discretion.

11 SHERRY HUTT: Let me clarify the record. We had
12 an individual that missed two meetings. The letter
13 was on the Secretary's desk for signature. The
14 Secretary didn't sign it by the time of the next
15 meeting, and two days prior to the meeting the
16 individual called and said I'll be at the meeting
17 tomorrow. So that individual then came to a meeting
18 after missing two, came to one, then missed
19 thereafter. So it wasn't more than two consecutive
20 meetings and such that the Secretary was able to act
21 under the rules. It's not that someone waived the
22 rules. I don't want anyone to think that we've
23 waived the rules or act arbitrarily or differently
24 with regard to any individuals.

25 COLIN KIPPEN: You know, there is another way to

1 proceed I think in this, and that is to require that
2 National NAGPRA use best efforts and that you log
3 your best efforts and that we do this within a week
4 so that we know that you've made an attempt. And
5 then if we go forward, which I believe we will, in a
6 telephonic conference we need to include in that
7 conversation - in the document that we send if we go
8 forward with less than all of the members, and I
9 will be recusing myself from that vote as I should.
10 But after that vote is taken, and I'm fairly certain
11 how that vote will turn out given the fact that we
12 do - we have some excellent candidates here and we
13 want to have a - want to give the Secretary options.
14 In any event, once that vote is taken we need to
15 just simply include in the transmittal to the
16 Secretary that we were unable to secure that last
17 person's involvement because of extenuating
18 circumstances, and as part of that communication we
19 can simply indicate the best efforts that were used
20 by this committee to assure that that missing member
21 was able to participate. So it seems to me that we
22 can - we can really work this out in a way that is
23 fair.

24 Again, I am just very concerned about sanctions
25 and removals of members of this committee. I am

1 particularly concerned about that issue in light of
2 the fact that there is no quorum requirement. So in
3 the event there are any administrative difficulties
4 with things like travel or anything else and less
5 than all of the members come to meetings, what will
6 occur is that you will have a very limited group
7 passing upon these most important issues. So again,
8 this is not something we should be hasty in acting
9 upon, and I think what we've done is given you the
10 opportunity to make that decision. I would say a
11 week, and I would say that you set up that
12 conference call within two weeks, and that you use
13 the next week and log your attempts to contact
14 Ms. Augustine so that we will have a record and then
15 we will go forward with a telephonic conference with
16 all of the members in attendance where we will vote
17 these names, vote upon the recommendation to the
18 Secretary.

19 SHERRY HUTT: Mr. Chairman, we will keep a log
20 of our efforts to manage this meeting. Is the - is
21 it a single agenda item for the meeting, that being
22 the member, or are there other agenda items?

23 COLIN KIPPEN: Presently, I think that's the
24 only - the only issue that we have presently, and I
25 would like to dispose of that as quickly as we can.

1 SHERRY HUTT: Is this a public meeting or a
2 private meeting?

3 COLIN KIPPEN: That's a - Ms. Hutt, you're
4 asking exactly the right questions.

5 Mr. Simpson, I need you to provide me with a
6 template as how - as to how I need to proceed in
7 this matter. Are we simply continuing this meeting
8 or are we simply delving - are we just involved in
9 an administrative process where we could simply have
10 a telephonic conference amongst ourselves?

11 STEPHEN SIMPSON: My reading, Mr. Chairman, of
12 the Federal Advisory Committee Act and its
13 implementing regulations would lead me to advise you
14 that this is a meeting on administrative matters of
15 the committee and that therefore the Federal
16 Advisory Committee Act does not require that this
17 meeting be public.

18 COLIN KIPPEN: All right. So we will simply
19 have a telephonic conference - let me understand
20 what you've said and state it back to you.

21 STEPHEN SIMPSON: That's fine.

22 COLIN KIPPEN: So at the end of today's meeting,
23 we can adjourn this meeting?

24 STEPHEN SIMPSON: Yes, sir.

25 COLIN KIPPEN: And then we will be - we will

1 have an administrative telephonic conference which
2 you will set up and you will inform us about. Is
3 that correct? And that meeting need not be
4 publically noticed or - and does not fall within
5 FACA. Is that your opinion?

6 STEPHEN SIMPSON: That's correct.

7 COLIN KIPPEN: All right.

8 SHERRY HUTT: And Mr. Chairman, that's assuming
9 that's the only agenda item.

10 COLIN KIPPEN: Yes.

11 STEPHEN SIMPSON: That's why Ms. Hutt asked that
12 question.

13 COLIN KIPPEN: Yes, and that is - that is the
14 only agenda item, but I do want to say to you -

15 SHERRY HUTT: Are you recusing yourself from
16 that meeting?

17 COLIN KIPPEN: I'm going to chair the meeting
18 and I'm going to recuse myself from the vote. But I
19 want to make sure that before we actually get to
20 that place and in fact if someone else wants to
21 conduct the vote when we get to that, I would
22 designate or ask someone to actually handle the
23 vote. But I need to be assured that best efforts
24 have occurred and that we have a record of what has
25 occurred with respect to one of our missing members.

1 And I think that's a fair process. I see that as my
2 role as the Chair of this committee. But I do want
3 this vote to go forward and I know that there are at
4 least two individuals in this room who are - three -
5 two individuals in this room who are seeking that
6 appointment and are willing to serve and I want to
7 tell you that it is my commitment that we get that
8 vote done in a timely fashion so that your name, if
9 the committee decides that that is the case that it
10 will be - it will move forward.

11 STEPHEN SIMPSON: Mr. Chairman, with respect to
12 what you just said about conducting the vote, not to
13 cut off any sort of volunteers from the committee
14 but I would remind the committee that yesterday you
15 elected a Vice-Chair.

16 COLIN KIPPEN: Okay.

17 STEPHEN SIMPSON: And that would make sense.

18 COLIN KIPPEN: For purposes of this - I would
19 like to be included on the call and I can tell you
20 my involvement will be with respect to this issue
21 that I have highlighted for the committee about
22 Ms. Augustine's involvement, but I would say, Dan,
23 you absolutely have to be on that call. All of us
24 need to be on that call, and I intend for - I intend
25 to recuse myself once I am satisfied that we have

1 conducted that in an appropriate fashion. I will
2 then turn that over to Dan and, Dan, you will
3 conduct the meeting.

4 SHERRY HUTT: Perhaps, not to belabor this, but
5 I understand your concern with the proof of the
6 process that you're asking, and one better way to do
7 that might be if we give you proof of the process
8 prior to entering into the telephone call, because
9 if you get into the telephone call and decided we
10 haven't done enough, then we'll have to recess the
11 telephone call, go back and do more work.

12 What I would prefer to do is give you the proof
13 of our process and our diary and the steps that we
14 have gone through in preparation for the meeting,
15 send that all to you in an email prior to the
16 meeting, obtain your permission to have the meeting
17 and your guidance that the steps have been adequate
18 prior to having the meeting. I'd rather not have
19 two telephone conferences, one where we analyze
20 whether or not we have gone through sufficient
21 steps. We can do that by email communication.

22 COLIN KIPPEN: I suggest that - my response is
23 that that is not how I wish to proceed. My response
24 is that you need to provide me with that information
25 in advance of the call and I will - I need to be on

1 that call to hear how the process goes forward, but
2 I will recuse myself from running the meeting.
3 Again, my concern is the issue of sanction and
4 removal of a member under a set of circumstances
5 that I think may well weigh in favor of the exercise
6 of some discretion in favor of this member who is
7 not present with us today. So again, I welcome that
8 you provide me with that information. It is my
9 intention - and I will immediately communicate to
10 you as well as everyone else what my impression is
11 about the set of information that you've provided
12 but I intend to participate in that call as a member
13 of the committee, but not to vote and not to chair
14 it.

15 STEPHEN SIMPSON: Mr. Chairman, I don't think
16 Ms. Hutt was suggesting that you not do so.

17 DAN MONROE: Mr. Chair, I understand the intent
18 of the language, but I think it's important for the
19 public record we make clear that no one suggested
20 sanction or removal of a member. What we're
21 discussing is the fact that a requirement - a
22 Federal requirement has not been fulfilled by one of
23 the members and therefore legally it's not possible
24 for her at present to participate. So there was no
25 desire on anyone's part to sanction or remove.

1 There's simply a posting up of the fact that in
2 terms of Federal requirements that member can't
3 participate and couldn't participate actually even
4 if she were here.

5 What we're striving to do as a committee is to
6 assure every opportunity, reasonable opportunity is
7 being given to that member to be able to participate
8 for the reasons I stated earlier. So I just think
9 it's important for the public record to make it
10 clear that we're not - no one is suggesting sanction
11 or removal. We're working very hard as a committee
12 to provide that opportunity for the reasons that
13 we've given. I think the procedure is fine. My
14 only question is how much time are we talking about,
15 because we've had a week, two weeks, and some other
16 times periods. How about ten days? Is that all
17 right with everybody?

18 COLIN KIPPEN: I think ten days - I think that's
19 a good suggestion, Mr. Monroe. I think - again, I'd
20 like to move this as quickly as possible, but ten
21 days is fine. If you could use your best efforts to
22 contact her, log it, provide me with that
23 information, and then schedule a meeting where
24 everyone is in attendance. And I would ask all of
25 the committee members that we need to make ourselves

1 available for that call.

2 We span six hours in difference of time. I'm
3 on the - I'm three hours - I'm six hours behind East
4 Coast time and several of you are on the East Coast.
5 So we need to just find a time in the middle of the
6 day. I will make myself available in the early
7 morning. I usually arise at 4:30 every morning. So
8 we can schedule this - I think you have a lot of
9 opportunities and options in terms of timing. So I
10 would like that to happen.

11 DAN MONROE: 4:30? Whoa.

12 COLIN KIPPEN: So anyway, thank you. Again, you
13 know, for the committee staff and for the members
14 here, please just understand that I've had some
15 experience with some of these issues in other
16 aspects of my life, issues of sanctions, issues of
17 removal, issues of even proceeding forward, and I
18 think we need to be cautious in terms of how we
19 proceed because it is the process that at the end of
20 the day people look at. And if they see it as a
21 fair and open process, you know, the committee's
22 credibility is enhanced. So - and I appreciate the
23 - this issue was brought to us by Ms. Hutt, and I
24 think it indicates she's done this is a very
25 transparent and open way. We've had a discussion

1 that has been very direct on this point, and I
2 appreciate your doing that because we would never
3 have had this conversation had you not brought this
4 issue forward. So I want you to understand that I
5 very much appreciate the fact that this issue has
6 been queued up for the committee and that we're able
7 to discuss it. That says something about how we
8 operate. So Mr. - is the committee satisfied? Are
9 we all satisfied?

10 All right. Mr. Tarler, may we move forward?

11 DAVID TARLER: Yes, the first item on the agenda
12 is a presentation by Cyd Martin and Mary Carroll of
13 the National Park Service, Park NAGPRA Program.

14 **PARK NAGPRA PROGRAM**

15 **PRESENTATION**

16 **CYD MARTIN**

17 CYD MARTIN: Good morning. I know from being in
18 the audience it was difficult to hear people
19 speaking from this table, so can you hear me?
20 Excellent.

21 COLIN KIPPEN: Good morning.

22 CYD MARTIN: Good morning. I'm Cyd Martin. I
23 am the Program Manager for the Park NAGPRA Program
24 and also Director for Indian Affairs in the
25 Intermountain Region of the National Park Service.

1 And I have with me Mary Carroll who is the program
2 lead for the Park NAGPRA Program. And we just have
3 a quick update for you.

4 First of all, I'd really like to thank the
5 committee for all of your work, time and attention
6 to all of these issues. I know it's a lot of work.
7 I've seen the size of the folders and I just want
8 you to know that all of us in the field really
9 appreciate it.

10 The other thing that I think is important to
11 note for the record is that Federal agencies are not
12 a single entity and that NAGPRA implementation is
13 variable from agency to agency and I just want to
14 get that on the record because there's a lot of
15 discussion about agency compliance. The Park
16 Service and many of our sister agencies work very
17 hard at NAGPRA compliance and in addition actually
18 illustrating that we also not only work
19 independently but we actually collaborate together
20 also with the tribes. And in the public comment
21 Superintendent Art Hutchison from Great Sand Dunes
22 will make a note of one collaboration that was
23 extremely successful.

24 So that said, I'd like Mary to go ahead and
25 give our report.

1 **MARY CARROLL**

2 MARY CARROLL: Thank you. As Cyd said, my name
3 is Mary Carroll. I am the program lead for the Park
4 NAGPRA Program of the National Park Service.

5 First, I'd like to give you a brief overview of
6 the Park NAGPRA Program, particularly for the new
7 members of the committee. Unlike other Federal
8 agencies, the NPS both complies with NAGPRA and
9 administers NAGPRA. This dual role, which was
10 initially performed by a single NPS office, created
11 some confusion about NPS compliance
12 responsibilities. So we separated those two
13 functions within NPS, establishing the National
14 NAGPRA Program and Park NAGPRA Programs.

15 National NAGPRA administers NAGPRA external to
16 NPS, including developing regulations and guidance,
17 providing staff support to the Review Committee,
18 managing the grants program, and assisting Indian
19 tribes, Native Hawaiian organizations, museums and
20 Federal agencies with the NAGPRA process. Park
21 NAGPRA was created to oversee NPS's own compliance
22 with NAGPRA. We ensure National Park Service
23 compliance with NAGPRA and assist all National Park
24 sites with their compliance activities, providing
25 technical advice, guidance, training and funding.

1 Park NAGPRA is located in Denver, Colorado, in the
2 Intermountain Region Office of Indian Affairs and
3 American Culture. Our staff includes Program
4 Manager Cyd Martin, who also is the Director of IAAC
5 and Superintendant of the Southern Four Corners
6 Parks, myself as the program lead, and a part-time
7 student assistant. Each of the seven NPS regions
8 has designated at least one person to serve as a
9 regional NAGPRA coordinator, many are also regional
10 ethnographers, and for some NAGPRA assistance is
11 unfortunately a collateral duty.

12 The National Park Service and the Park NAGPRA
13 Program recognize that chemical contaminants applied
14 to museum objects may be hazardous to Native
15 American communities, as the objects are repatriated
16 and reintroduced into use. We acknowledge that
17 cultural items subject to NAGPRA in NPS collections
18 may have been treated with potentially dangerous
19 materials. We are committed to proactively
20 addressing the contaminated collections issue in
21 National Parks. The NPS expressed its commitment by
22 issuing a Director's Memo in November 2008. You
23 should have a copy of that in your binders.
24 Director's Memos are documents that direct the
25 regional directors and superintendents to take

1 specific actions regarding a particular topic.

2 In the memo titled "Tribal Consultation on
3 potential hazardous treatment of NAGPRA objects,"
4 the Director asked Regional Directors and
5 Superintendents to go beyond NAGPRA's requirement to
6 inform tribes of known treatments by taking two
7 steps. These steps are, first, in all government-
8 to-government NAGPRA consultations between NPS and
9 Indian tribes or Native Hawaiian organizations, NPS
10 officials will inform the tribes about the
11 contaminated collections issue, whether the object's
12 treatment history is known or not. NPS officials
13 must discuss the potential that objects have been
14 treated so that tribes are fully informed before
15 they take NAGPRA items back into their tribal
16 communities. And second, NPS officials must also
17 inform the tribes that the NPS has the capacity to
18 test for certain contaminants. If a tribe wishes to
19 have the items tested, the NPS will arrange for
20 testing by Intermountain Region Museum Services
21 Program conservation staff.

22 To help park staff talk with tribes about the
23 fact that NAGPRA items might be contaminated, Park
24 NAGPRA developed a short, one-page document titled
25 "Talking to Tribes about the potential presence of

1 hazardous chemicals in or on cultural items subject
2 to NAGPRA." A copy of that is also in your binders.
3 You can think of it as a crib sheet for the parks.
4 It includes brief pointers for talking with tribes
5 about potentially contaminated collections.

6 The second element of the Director's Memo is
7 the directive to inform tribes that contaminants
8 testing of cultural items subject to NAGPRA is
9 available through NPS's Intermountain Region Museum
10 Services Program. To help parks with the testing
11 process, Park NAGPRA developed a guide titled
12 "Contaminants Testing of Cultural Items Subject to
13 NAGPRA," which should also be in your binders. The
14 guide was completed in March 2009 and is intended
15 for use by parks that hold items that may have been
16 treated with pesticides, preservatives, or other
17 substances. It describes general requirements,
18 outlines the process for requesting testing, and
19 briefly discusses requests for contaminants testing
20 from tribes or institutions outside NPS.

21 The three documents - the Director's Memo, the
22 one-page crib sheet, and the guide to having items
23 tested - are available to all NPS units on the NPS
24 intranet site. Thank you for your time. We're
25 happy to answer any questions you have.

1 COLIN KIPPEN: Thank you for your testimony. I
2 would direct the committee to tab 10. Tab 10 in
3 your materials contain the information that Mary
4 Carroll just described to us. Does the committee
5 have any comments or questions?

6 **REVIEW COMMITTEE QUESTIONS AND COMMENTS**

7 CYD MARTIN: Colin, could I make one more
8 comment?

9 COLIN KIPPEN: Sure.

10 CYD MARTIN: I just wanted to note anybody who's
11 in a Federal agency knows how bureaucratic processes
12 work, and I just would like to note that Mary and I
13 really appreciated the fact that NPS leadership paid
14 attention to this issue and really focused on it
15 frankly. Because in order to get a memo out of the
16 Director's Office takes a certain amount of effort
17 and coordination and we were very impressed with the
18 response from Washington.

19 COLIN KIPPEN: I want to also for the record
20 indicate that this issue was queued up by National
21 NAGPRA. We did have a presentation, I believe it
22 was two or three meetings ago, where staff came
23 forward and presented the issue of contamination and
24 how to address it. So I believe that was the place
25 where that awareness was brought to the committee's

1 attention and I believe that that was then followed
2 up by work at the administrative - at a higher
3 administrative level to move this policy statement
4 forward. Is that correct?

5 CYD MARTIN: Yes, I think it is, but at least in
6 Intermountain Region, and I believe in some of the
7 others regions too, we've had a lot of interest from
8 the tribes who have come to us with serious concerns
9 where they have had items returned to them from
10 other museums, not necessarily Park Service
11 collections, that have been contaminated, were
12 actually taken out and put - spread back out in the
13 park - I'm sorry, in the tribal community, but then
14 the contamination was realized. Those items had to
15 be recollected out of actually people's homes. And
16 so there's been a lot of concern. The Hopi Tribe,
17 in particular, still has items that are stored in
18 Leigh Kuwanwisiwma's garage that he had to take
19 back. So that - I think our tribes actually called
20 it to our attention in that - kind of that neck of
21 the woods.

22 COLIN KIPPEN: Thank you. Committee members,
23 comments?

24 ALAN GOODMAN: Thank you for your presentation.
25 So currently you're testing for heavy metals and

1 only heavy metals. Could you comment on that?

2 MARY CARROLL: Well, yeah, we have - the Western
3 Archaeological - I can never remember the name -
4 Conservation Center in Tucson, which is the
5 Intermountain Region Museum Services Program, they
6 recently, with - in cooperation with Park NAGPRA,
7 purchased an XRF to test for heavy metals, so
8 arsenic, mercury, and lead. So yeah, pretty much, I
9 think they have some other capacity but this is
10 focused on the heavy metals.

11 ALAN GOODMAN: So I guess my comment is - I
12 mean, that's a very limited range of potential
13 pollutants and contaminants, and is there any effort
14 being made at this point to expand the range of
15 testability to organic pollutants, for example?

16 CYD MARTIN: Yeah, testing for some of those -
17 actually, I'm not that conversant in some of that,
18 but I know it requires other equipment and other
19 processes. And for us in all honesty this was a big
20 step just to get the XRF, you know, to kind of hit
21 the arsenic, mercury, and lead. So other
22 contaminants we're having to just, you know, go by
23 the process really that NAGPRA requires, which is to
24 warn of the possibility or actually of known - yeah,
25 but there's like paradichlorobenzene. And, you

1 know, and the parks definitely used those, you know,
2 substances like that too, but so far we don't have
3 any way to actually test for that.

4 ALAN GOODMAN: Thank you. And just to follow
5 up, I mean, those are the things that personally I
6 would be more concerned about. Those are the types
7 of things that are more volatile and are more likely
8 to spread to individuals who are handling them.

9 CYD MARTIN: Just as a personal anecdote, Alan,
10 because I used to work in curation. Many, many
11 years ago, I'm showing my age, I worked at Grand
12 Canyon, and I remember going into the museum
13 collection, which was managed by a very well-meaning
14 elderly, at that time, woman, who was also the
15 librarian, and I opened up one of the cases that
16 held natural history items and she had used so much
17 paradichlorobenzene that it had recrystallized on
18 the inside of the case, like on the back. Like it
19 just like knocked you over even when you walked into
20 the room much less opening a cabinet, so it's a
21 definite issue and danger.

22 COLIN KIPPEN: Thank you. Any further comments?

23 ERIC HEMENWAY: I'd like to make a comment. I'd
24 like to thank you for coming here, and from a tribal
25 perspective, contamination is a real serious issue.

1 With the few items I've been able to help repatriate
2 back to my tribe the first concern is contamination.
3 And we recently had some eagle feathers repatriated
4 to us from a museum out in St. Louis, and once these
5 feathers were returned the people in the community
6 were like, well, Eric, what's up with those
7 feathers? And I said you can't introduce them back
8 into the community without having them tested first.
9 And I know the testing process is pretty expensive
10 and it's really limited, only certain individuals
11 that I know of in the Midwest are qualified to do
12 this and they have to have the machinery and the
13 training to do this. So I appreciate the efforts on
14 your part to actually do the testing and have the
15 equipment available because a lot of times tribes
16 will get stuff back but they don't have the funds to
17 hire somebody or take the items to somebody to test
18 them. And that's a pretty big issue with all the
19 tribes it looks like across the board, because the
20 ultimate goal is to reintroduce the item back in the
21 community but you don't want to reintroduce
22 something that's basically poisoned. So I thank you
23 for taking a proactive effort in this.

24 CYD MARTIN: Thank you, and just to note we try
25 too to accommodate tribal requests for testing, even

1 outside of our region. And I will note, probably
2 because it would be of interest to the committee,
3 that in Intermountain Region we are having more
4 interest recently on summary items. So as we move
5 through the process with inventory items the issues
6 are arising, you know, the tribes are interested in
7 reviewing summary items and having them repatriated
8 and these exact issues will arise time and time
9 again.

10 COLIN KIPPEN: I too wanted to thank you for the
11 work that you did on this issue, and I specifically
12 wanted to highlight two of the things that I've seen
13 in this - in these materials. You have I think a
14 very clear roadmap about how these issues need to
15 occur, and it's rather technical but it needs to be.
16 And then the second thing that you have here is the
17 document, which is I think a - it's a one-page
18 general summary, and I found that very clear. And I
19 think that approach is really good because people
20 have different experiences and probably different
21 capacities with respect to these kinds of
22 administrative requirements. And I think that those
23 differences need to be understood, and it's about
24 how you communicate. It also affects how we
25 consult, because we do not all share a similar value

1 base and we do not have similar experiences. So I
2 very much liked the very clear one-page presentation
3 that you have.

4 I think that if you're not sophisticated about
5 administrative processes, it really does help you to
6 understand what you need to do, and I think after
7 reading that you're much better able to understand
8 the more technical roadmap that you've presented for
9 people to follow. I'm saying this not only because
10 it affects what you're doing but I'm saying this
11 because it also affects how we do business on this
12 committee. You know, we have a very, very broad
13 range of experience and sophistication around these
14 administrative issues and we need to always be
15 concerned about how it is that we do our work in a
16 way that we can communicate clearly with everyone
17 across that spectrum, whether you are experienced in
18 these administrative processes or whether you're
19 not. So again, I really appreciate the approach.
20 I'm glad you included that last page for us to look
21 at because it helps us to better understand how you
22 are communicating with tribal members.

23 COLIN KIPPEN: Thank you.

24 DAN MONROE: Thank you.

25 ERIC HEMENWAY: Thanks.

1 COLIN KIPPEN: Mr. Tarler.

2 DAVID TARLER: We will have public comment now.
3 The first person I would like to call is Bambi
4 Kraus, the Executive Director of the National
5 Association of Tribal Historic Preservation
6 Officers.

7 **PUBLIC COMMENT - BAMBI KRAUS**

8 BAMBI KRAUS: Thank you very much. Thank you,
9 committee members and staff of the National NAGPRA
10 Program, other Federal officials and members of the
11 audience who are here on a beautiful Sunday in
12 Seattle. My name is Bambi Kraus. My first initial
13 is D for Denise, for recording purposes. I'm the
14 President of the National Association of Tribal
15 Historic Preservation Officers. We're located in
16 Washington, DC, and I bring greetings from our
17 board. Our current chairman is Reno Franklin, who
18 is Kashia Pomo. And our other members of the board,
19 just to give people an idea of our scope and
20 breadth, include members - the THPOs for Colville,
21 Navajo, Ho-Chunk, Narragansett, Passamaquoddy, Mille
22 Lacs, Makah, and Absentee-Shawnee, and I'm a member
23 of the Tlingit Tribe and I'm also an elected tribal
24 official from Kake, Alaska.

25 So today I'd like to just go over some things.

1 I wasn't able to attend the last meeting, the
2 October meeting in San Diego, so I just wanted to
3 get caught up on some of that. I did talk to the
4 THPO from Colville, who had to leave, and she had to
5 leave because she had to lead the cleanup for the
6 tribal cemetery at the Colville Reservation. And I
7 know Memorial Day is a tough time, but I use that as
8 an example the differences that tribal
9 representatives and Native people have to their
10 communities versus what perhaps scientists may not
11 have that role anymore, which is they're actually on
12 the ground working in their communities. And I know
13 many tribes around the country over this weekend are
14 busy working with their communities to maintain and
15 restore their tribal communities, tribal cemeteries
16 in particular.

17 I also just wanted to make note two other
18 things in case - I may not be the first, but I am
19 born and raised here in Seattle, so I'd like to
20 welcome everyone to the greater Seattle area, and I
21 was surprised at the good weather. But it's - you
22 know, it's encouraging that things go on and stay
23 the same but changed quite a bit since I lived here
24 a long time ago. I know there are many tribes here
25 in the Seattle area. I wish more could have come

1 and I know that they care about this topic quite a
2 bit. And perhaps the cost of coming here Memorial
3 Day had something to do with it. I really don't
4 know.

5 I wanted to give an update on - I'm calling it
6 the Black and White Report. This is the report that
7 I have met with you on before. Since it came out in
8 August of '08, which I think was eight months ago,
9 and I was unable to attend your last meeting in
10 October in San Diego, I just wanted to give you an
11 update on it and also just for the two members of
12 the committee who are new, just go over some of the
13 information in case you haven't had a chance to go
14 over it. This was funded to a grant, a NAGPRA grant
15 to the Makah Tribe who entered into an agreement
16 with the National Association of THPOs to do the
17 research, which was both publically available
18 information and some original research. Again, I
19 wanted to - since it wasn't published when I last
20 presented before the committee, I just wanted to go
21 over some highlights and I think one of the
22 highlights, although it wasn't our original
23 research, was a forward inserted by Senator Inouye,
24 who was one of the original authors of the Act. And
25 I'm not going to read the entire thing, it's very

1 short, but he expresses his support in terms of -
2 you know, this may be the first examination of how
3 Federal agencies are implementing the Act, but he
4 considers it something that, you know, we all need
5 to do and how important the law is and how important
6 it is for Indian law and for Indian practices. So
7 with that type of support I think it was a good sign
8 and so from that I just wanted to go over some of
9 the highlights.

10 Again, some of it's original research, some of
11 it was publically available information, but we also
12 decided to include information and to make it a
13 learning tool. So in here we have excerpts of the
14 law and citations, in case anybody wants to know
15 what 10.7, 10.11 is, current status of 10.11, so
16 that, you know, even though you may not know the law
17 you can actually look through it and hopefully learn
18 quite a bit. I know it's a very complex law and I
19 learned a lot in going through it and I just think
20 it's a process we have to learn, as long as this is
21 the law of the land.

22 One of the - again, we - it was broken into
23 seven major parts. I'm not going to go over each
24 one. For example, I just explained one of them was
25 the legislative and regulatory review. We also did

1 original information research. We had, excuse me,
2 two staff, two people who were on contract with
3 NATHPO to go to the Park Services offices in
4 Washington, DC, and look at each original submission
5 for the inventories and summaries. And they
6 compared that to what was published in the Federal
7 Register. So that's actually - their work is
8 inserted as an appendix in the chart and, I'm sorry,
9 the two new members weren't at the earlier meetings
10 but we explained why some of the differences occur
11 between what was submitted in the original paperwork
12 and then what was actually published in the Federal
13 Register.

14 What's interesting is since we've done this
15 report, I've talked to several Federal officials and
16 they were all excited and came up to me and said,
17 you know, I saw - I heard about your report and they
18 would pull out the page and say I can explain why
19 this is different from that. And some people said
20 that they were concerned because they had worked on
21 the NAGPRA process for their entire history of their
22 Federal agency and didn't understand that there was
23 any discrepancies between what they had submitted
24 originally and what they had been published - what
25 had been published in Federal Register notices. And

1 one actually told me that I guess there's a new
2 process on paperwork that has to be signed off on
3 prior to the publication of a Notice of Inventory
4 Completion. And I don't know exactly what that
5 letter is. It's something that's an internal
6 process to the National Park Service. But the
7 bottom line in their comments was I didn't know that
8 the Park Service was waiting for us to sign a
9 pending Notice of Inventory Completion. As far as
10 they knew, they had completed their work and now
11 they had found out that the word came back to them
12 that in fact they hadn't checked a box or signed a
13 letter that said that they were now ready to publish
14 their Federal Register notice.

15 I'm just reporting what I'm hearing. I'm
16 trying not to insert any bias, whether as an elected
17 tribal official or a tribal rep. I'm just reporting
18 exactly how I've heard it. They've also sent me
19 follow-up information on it. So my point in all of
20 this is that I feel like the report is having an
21 effect, and I think it's a positive effect because
22 people are talking about NAGPRA. And I think that's
23 good because, you know, it's an important law.

24 So on the culturally affiliated/culturally
25 unidentifiable Native American inventory database,

1 you know, we did - a big part of this report
2 included an examination of that, and since the
3 report is published we pulled out some excerpts
4 that, you know, I hadn't had a chance to go over
5 with the committee in terms of our findings and
6 preliminary recommendations. So for example, there
7 are - there are records in the culturally
8 unidentifiable Native American inventories database
9 that state that skulls have been sent to the
10 Smithsonian and there are no further notes. So in
11 other words, where actually are these remains being
12 housed and what is the relationship between the
13 Federal agency and the Smithsonian and housing of
14 that - those particular human remains. And some
15 records also include information that will say in
16 the notes that they have 12 human remains, but when
17 they actually include the counts in the minimum
18 number of individuals, they will list zero. So in
19 other words, is there a significant undercount in
20 what is actually being reported in the database?

21 The report also included two summaries on what
22 we called high profile NAGPRA cases, Kennewick Man
23 and Fallon Paiute and Spirit Cave Man, and if people
24 have time I encourage them to read it because it
25 demonstrates the importance of cultural affiliation

1 and collaboration of Federal agencies and tribes
2 working together.

3 In terms of using publically available
4 information, we also looked at the grants program by
5 going to the Park Service's website, and I think
6 it's been reported widely in the Indian press anyway
7 that from Fiscal Year 1999 to Fiscal Year 2007 that
8 over 3 million dollars had been taken from the line
9 item in the grants fund and used for different
10 purposes that were related to administrative
11 purposes or other such, and I think that's been
12 probably the most reported and talked about.

13 We also had - we did two national surveys of
14 Federal Preservation Officers and Indian tribes,
15 Native Hawaiian organizations and Alaska Native
16 Corporations. Pretty much across the board everyone
17 is asking for training. I've reported on that
18 before. Interestingly enough, just to tag onto the
19 previous witness, the contamination issue we had
20 used as one of our survey questions, and no Federal
21 agency who responded to our survey actually has a
22 policy on how they handle contaminants. So there -
23 you know, there are important parts of the law that
24 could be strengthened and improved.

25 For project limitations and future research, of

1 course, we only looked at Federal agency
2 implementation. It was a very small grant, and so I
3 just wanted to let people know that again, this is
4 just for Federal agencies, not museums.

5 I'm going to jump right to a summary of the
6 recommendations. We had general recommendations and
7 then we had eight specific recommendations. For
8 purposes of time, I'll just say that we had urged -
9 we had broken it down into legislative, regulatory,
10 NAGPRA Program, NAGPRA Review Committee
11 recommendations. So for purposes of oversight and
12 enforcement, we would - we're calling for a creation
13 of an interagency council, they would look at
14 compliance and training. We also urge, for example,
15 the National NAGPRA Program or an entity to publish
16 NAGPRA contacts at each Federal agency. It
17 currently doesn't exist and I think it would help
18 quite a bit for people to identify someone in each
19 agency.

20 For the Review Committee, as you know it's your
21 database, the culturally unidentifiable Native
22 American inventories database, and our
23 recommendations felt that it could be improved in
24 terms of search functions and the technology that's
25 available. But we would also urge that the National

1 NAGPRA Program and the Review Committee maintain on
2 its website an updated list of upcoming publication
3 of Notices of Inventory Completion, and a list of
4 these notices that are pending in terms of people
5 being able to watch when they are going to be coming
6 up. We also suggest that there may not be adequate
7 money for the program, and that's just not for the
8 National NAGPRA Program, but for Park NAGPRA, tribal
9 NAGPRA. I mean it's - basically there's a need for
10 more money to implement the Act. And we had also
11 requested or recommended compliance audits, and we
12 requested that the Congress request a General
13 Accountability Office look - I mean audit, GAO audit
14 into how the program is operating.

15 So Mr. Monroe, I know that we had talked about
16 that at length in October of '07, and so I'm
17 thinking that 20 months since we had that initial
18 discussion that, you know, as we heard earlier there
19 is someone here from the General Accountability
20 Office to look at these - at this program and to
21 learn more about it. So I think that's encouraging.
22 So that - I just wanted to give an update on that
23 report, and I had a few other comments. But I guess
24 I'll stop and see if there are any questions on how
25 the report has been distributed or if you have any

1 questions on the report in general.

2 COLIN KIPPEN: Thank you, Ms. Kraus.

3 Committee members, comments, questions?

4 COLIN KIPPEN: No comments, no questions. I
5 have just a couple of questions. The report - once
6 the report has been issued, you've distributed it to
7 whom?

8 BAMBI KRAUS: Well, we - in August of 2008, we
9 sent hard copies to - I've got to remember this -
10 one is we put it on our website, and the website
11 went live in August, August of 2008. Hopefully all
12 of you who were on the committee received a hard
13 copy of it. I had a difficult time getting one to
14 Rosita Worl. I tried sending it via Fed Ex three
15 times, and three times it was refused by the
16 Sealaska Heritage Institute or the - I mean, the
17 Post Office refused to deliver it. So I've given
18 her one personally. But everyone who responded to
19 the survey got one, including the Federal officials,
20 but it's publically available on our website.

21 COLIN KIPPEN: And the improvements that you're
22 - or I guess the conversations that you're seeing
23 lead you to the conclusion that - what are - how do
24 you see this as helping us to do what we are trying
25 to accomplish here?

1 BAMBI KRAUS: Well, this was the first study on
2 a national level of how Federal agencies are
3 implementing the Act, and the bottom line is that
4 there's very little compliance on that level.
5 There's very few incentives for Federal agencies to
6 comply with the Act. So I feel anyway that the fact
7 that you're getting information out, including how
8 the Act was written and the regulations on how to
9 conduct the Act, you know, the more people who learn
10 about how this is supposed to work and how it is
11 working or not working is strengthening the program.
12 If you're examining it anyway - I mean, I think it
13 just strengthens the program rather than just tears
14 it down.

15 COLIN KIPPEN: On the issue of training, are you
16 folks involved in any training?

17 BAMBI KRAUS: We have been quite a bit at
18 NATHPO. It's one of our missions, to provide
19 training. We've done that in small workshops, small
20 30-person seminars that are a week long. We trained
21 with the National Trust for Historic Preservation
22 about 100 lawyers and representatives from tribes on
23 public land, protecting sacred sites on public land.
24 So we've done quite a bit of training in the past.

25 SHERRY HUTT: Mr. Chairman, if I might on a

1 point of - I believe that training was funded by
2 funds from the National NAGPRA Program in a
3 cooperative agreement with NATHPO that was struck in
4 September of '07 to fund that conference in October
5 of '07. So although the National Park Service may
6 have not been given credit - or the National NAGPRA
7 Program, I just want to bring that to your
8 attention.

9 BAMBI KRAUS: Actually, my reference to the
10 National Trust was in 2003 and it was Denver before
11 the National Trust Conference.

12 COLIN KIPPEN: So there's been a - so I guess to
13 just again the takeaway is that there is some -
14 there are some discrepancies in terms of how Federal
15 agencies are implementing this. There are some
16 discrepancies in terms of how they are doing their
17 inventories, and there is a great need for capacity
18 building amongst the Federal agencies. Is that a
19 fair statement?

20 BAMBI KRAUS: I think it's a fair statement. I
21 had an interesting experience with a woman who works
22 for the Tennessee Valley Authority, and when I met
23 with her two years ago about the project she was
24 embarrassed - and I'm just speaking in gross terms
25 here so - and I saw her recently and she came

1 running up to me telling me how excited they were
2 because they were about to affiliate some remains.
3 So I think that - generally, I think people want to
4 do the Act. I think that it's very complex. You
5 really have to know it. It's very time-consuming,
6 and I think because it's so time-consuming that it's
7 very expensive. I think it takes a lot of money and
8 commitment on the level of tribes or museums or
9 Federal agencies to actually want to implement it.

10 COLIN KIPPEN: I don't have any further comments
11 except to say that this is what I think our role is:
12 Our role is to be able to get factual information
13 and to be able to ask policy questions and to shape
14 policy in a way that allows for the Act to be
15 enforced and the Act to actually be accomplished.
16 And I think it's a very difficult Act, especially
17 when you spread it across all of the various museums
18 across the country, of different sizes and of
19 different locations and of different capacities, the
20 same with Federal agencies, especially in times of
21 budget shortfalls and just the need to be more
22 efficient with every dollar they have to spend. So
23 I think that it's important we do this work.

24 And I - as I read your report, I thought to
25 myself that this is a good start, and I do see this

1 as sort of one of the preliminary steps before the
2 government accountability does its work, because you
3 have some information that you've assembled. When
4 they ask questions of Federal agencies, my
5 expectation is that they will get a very, very
6 different response in terms of willingness and the
7 need for these agencies to comply with the requests
8 in an absolute - in the highest fashion. Because
9 the Government Accountability Office reports to the
10 Congress, the Congress funds these programs. So
11 there is a direct connection there. Anyone who's
12 ever worked on the Hill understands that the
13 Government Accountability Office is the
14 Accountability Office and it provides factual
15 information to guide policy and appropriations by
16 the Congress. So I think that this is a good start
17 and I really look forward to the Government
18 Accountability Office report to give us better
19 information.

20 So thank you. If there are no more - are there
21 any more comments? No further comments?

22 BAMBI KRAUS: Can I - I just want to make - a
23 couple questions and just some updates also on -
24 well, in terms of the cooperative agreement between
25 the National Association of THPOs and the National

1 NAGPRA Program, we did indeed enter into an
2 agreement in late September of 2007 for \$4,700 and
3 it expired - it ran through October 31, 2008, and we
4 - for the \$4,700 we were to have a trainer come to
5 our tenth annual meeting in Palm Springs,
6 California, to provide a training session on ARPA
7 and NAGPRA violations. And that went successfully.
8 We had a great response in terms of the attendance
9 and the comments. They - you know, people really
10 want to hear and get information on how to improve
11 the Act and that means compliance. So thank you
12 very much for your - all of your support for that.
13 We were - we closed it out and on April 14th, 2009,
14 NATHPO was paid \$4,316.56. I'd like that to be
15 noted in the record because one of the issues
16 related to that was whether or not the money that
17 was paid to NATHPO came out of the grants line item
18 or not, and NATHPO was assured by the Park Service
19 that no grant money was used in the cooperative
20 agreement. So I'd like the record to clearly state
21 that.

22 SHERRY HUTT: We will so state, Chairman, that
23 the discussion that Ms. Kraus and I had in June,
24 July, and August of 2007 was that the funds were
25 coming from the law enforcement funds for training,

1 and that's where they came from. There were the
2 funds that had been much discussed by Ms. Kraus
3 regarding the funds that were left on the table were
4 not left on the table until July of 2008, which was,
5 what, ten months after completion of the performance
6 of the cooperative agreement. So the grant funds
7 could not have - I'm not clairvoyant, I couldn't
8 tell that ten months after we entered into the
9 cooperative agreement that grant funds would be left
10 on the table. So that there's no confusion on that,
11 there was no confusion when the funds were given
12 where they were coming from and what they were for,
13 and they were given in 2007, September 2007. The
14 paperwork reached my office in March of 2009. And
15 if there's any questions on this cooperative
16 agreement or any cooperative agreement we had with
17 NPI, and I say that because I have to leave, put it
18 on the next agenda and I'll give you all the
19 paperwork.

20 COLIN KIPPEN: Actually I'm not - I'm a little
21 confused here as to what the - what this
22 conversation is about.

23 SHERRY HUTT: It's just - I have no idea, but if
24 we're going to go back into this issue that was
25 raised before, know that we will give you whatever

1 paperwork you want and supply it all.

2 BAMBI KRAUS: I'll just - for clarification, and
3 I'm happy to move on with the topic, is that NATHPO
4 does not want to take money away from tribes, Native
5 Hawaiian organizations or Alaska Native Corporations
6 or museums in terms of the grant money. And there
7 was a comment made in public that we had taken money
8 from the grant program. And that's my request to
9 have it clearly written on the record that we did
10 not take -

11 COLIN KIPPEN: I took notes on your
12 presentation, and you - I think the fifth point you
13 made in telling us about the highlights was that you
14 - there was a finding about money being taken from
15 the grant program to be used for other, I think you
16 said, administrative purposes. So it sounds to me
17 like what you're saying is that the funds that you
18 got were not from the grant program. Is that what
19 you're saying?

20 BAMBI KRAUS: That is my - right.

21 COLIN KIPPEN: Again, that's another - that's a
22 separate issue. That's -

23 BAMBI KRAUS: Right, I understand.

24 COLIN KIPPEN: But now I understand what you're
25 talking about. Are there any more comments or

1 questions?

2 BAMBI KRAUS: Well, I'd like to also say that if
3 there is such a thing as a vendor list for the
4 NAGPRA Program, I think NATHPO would like to be
5 included in that for any future work or any kind of
6 notices on training or technical assistance.

7 COLIN KIPPEN: Are you available to do the kinds
8 of training that is presently being offered by other
9 vendors?

10 BAMBI KRAUS: Oh yeah, especially at the funding
11 level that's being offered to develop new courses
12 and provide travel scholarships. We have had
13 several agreements with the Park Service in our 11-
14 year history to do such workshops that we've already
15 discussed today.

16 COLIN KIPPEN: Okay. Any further questions? No
17 further questions. Thank you.

18 BAMBI KRAUS: Well, I just had a couple more
19 questions for the actual -

20 COLIN KIPPEN: We're going to have to wrap this
21 up here, so please -

22 BAMBI KRAUS: One is I think that there is some
23 urgency to finish some of these reserved sections of
24 the Act because the Act was signed on November 16,
25 1990, and almost 20 years have passed since the Act

1 was actually signed into law.

2 Finally, does Indian preference apply at the
3 National NAGPRA Program? If there's a vacant
4 position for the regulations spots, I think it would
5 be good for Indian Country to know - my
6 understanding there are currently no Native
7 Americans who work for the NAGPRA Program - whether
8 or not Indian preference applies at the National
9 NAGPRA Program.

10 And then finally just two NATHPO updates, I
11 invite you all to attend the eleventh annual NATHPO
12 meeting that will be in Durant, Oklahoma, hosted by
13 the Choctaw of Oklahoma. It's going to be the
14 second week of August. And then just to say thanks
15 to David Tarler and Sherry Hutt because they had
16 provided some assistance early on in the NATHPO
17 state laws project. And for those who are
18 interested, you can actually go to the NATHPO
19 website, NATHPO.org, and click on "Law Enforcement,"
20 and there is a state law database there that you can
21 look at the current state laws. I think what
22 they're talking about is going to be much more
23 thorough and I'd look forward to seeing it. I just
24 want to let people know right now that there's
25 several sources to look up state law citations and

1 different types of penalties and right now NATHPO
2 has a version from 2006, I think, that's on our
3 website today. So thank you very much.

4 COLIN KIPPEN: Thank you.

5 DAN MONROE: Thank you.

6 STEPHEN SIMPSON: Mr. Chairman.

7 COLIN KIPPEN: Yes.

8 STEPHEN SIMPSON: With respect to the Indian
9 preference question, the answer is no, that the
10 issue of Indian preference - Indian preference does
11 apply to the Bureau of Indian Affairs. It is
12 currently in litigation as to how much that applies
13 throughout the rest of the Department. However, the
14 agencies that are currently - the agencies that are
15 being sued on that are the Office of the Assistant
16 Secretary, Indian Affairs, and the Office of the
17 Special Trustee for American Indians, not the
18 National Park Service.

19 COLIN KIPPEN: If - is there any process by
20 which that issue could - I'm not sure whether that's
21 an issue that comes within our committee's
22 jurisdiction, but the broader question is Native
23 people involved in something that has to do very,
24 very much with what they value and care about.

25 STEPHEN SIMPSON: Indian preference is statutory

1 under the Indian Reorganization Act of 1934. It
2 would probably be -

3 COLIN KIPPEN: My question is the scope -

4 STEPHEN SIMPSON: - it would need to be - the
5 question is the scope, yes, and any change in the
6 hiring practices - any required change in the hiring
7 practices of the NAGPRA Program or any other part of
8 the Federal Government would need to be statutory.

9 SHERRY HUTT: That being said, I have to tell
10 you, Mr. Chair, that when the last opening in the
11 National NAGPRA Program for a staff member and any
12 opening that I've - we've had a hundred percent
13 turnover in the staff, professional staff in the
14 program, and at each time I've wanted to make sure
15 that all of those openings were broadly advertised,
16 and I have made dozens of phone calls to people in
17 Indian Country to get people to apply for those
18 positions. And I can as well document the evidence
19 on this as we go forward if you so like, but we have
20 an opening now. It will be posted shortly. We'll
21 keep it posted for as - an open period - I mean, we
22 need to get the position filled, but we will keep it
23 open because it takes time for the word to get out a
24 lot of times and for people to decide if they want
25 to move to DC and take a position. And I'm looking

1 to get the most robust applicant pool that we
2 possibly can, and I'd be delighted to see numerous
3 applications from people in Indian Country.

4 COLIN KIPPEN: Thank you.

5 Mr. Tarler?

6 DAVID TARLER: Mr. Chairman, might we take a 10-
7 minute break, please.

8 COLIN KIPPEN: All right. Thank you. We'll be
9 in recess for ten minutes.

10 **BREAK**

11 COLIN KIPPEN: I would like to reconvene the
12 meeting and continue with the public comments.

13 Mr. Tarler?

14 DAVID TARLER: Mr. Chair, the next person I
15 would like to call is Anthony Garcia from the Hearst
16 Museum at the University of California, Berkeley.

17 COLIN KIPPEN: Mr. Garcia, welcome.

18 **PUBLIC COMMENT - ANTHONY GARCIA**

19 ANTHONY CARCIA: Thank you. Good morning,
20 members of the committee, National NAGPRA Director
21 who is not here, and everyone else and to the
22 audience. Thank you. My name is Anthony Garcia.
23 I'm the Repatriation Coordinator for the Phoebe
24 Hearst Museum of Anthropology in Berkeley,
25 California. I come here to give you a little report

1 on where we've gone since the last time I talked
2 before this committee I guess seven months ago.

3 And in a quick rundown, as we have been - as I
4 see as we have been improving our ability to reach
5 out to tribes to get into consultations and to move
6 forward, I can report to the committee that we have
7 one repatriation which just has gone forth three
8 months ago, one pending Notice of Intent to
9 Repatriate which will be a repatriation in - before
10 the end of June, and seven active claims now that we
11 are working with tribes to get their claims through,
12 and we believe that is a good number that we have.
13 We also have seven more claim requests that we're
14 working in consultation with other tribes who wish
15 to put a claim forth and are working with us so that
16 we can assist them in that process.

17 We have two Notice of Inventory Completions
18 that we are working on that have been a great deal
19 of work for the museum to do. They're very large
20 collections that we are trying to, one, change the
21 classification of many of the remains from
22 culturally unidentifiable to culturally affiliated
23 which we are doing and hope to do in the upcoming
24 month or two, and a lot of work we're doing, a lot
25 of consultations, a lot of phone consultations, and

1 a lot of activities along the line of our newly
2 constituted Berkeley campus committee, which is now
3 made up of three members from the anthropological
4 community at Berkeley and three members from campus-
5 wide communities which are faculty members and
6 lawyers, two of which are Native American. And I
7 wanted to bring that to you and ask you if you had
8 any questions for the Hearst Museum that I can take
9 or answer.

10 COLIN KIPPEN: Thank you, Mr. Garcia.
11 Committee?

12 SONYA ATALAY: I do have one quick question. I
13 just wondered in terms of the Review Committee
14 you're talking about, you mentioned that there's
15 faculty who are involved in this and I wonder - and
16 you also mention there are Native people who are on
17 the committee, I wonder if any of the faculty - if
18 there are any Native faculty who are on that
19 committee.

20 ANTHONY GARCIA: Yes, the two Native members
21 that I'm talking about are faculty on the campus.

22 SONYA ATALAY: And are those names publically
23 available who are on your committee?

24 ANTHONY GARCIA: Yes, all the names of all the
25 committee members are publically available.

1 SONYA ATALAY: Could you share those names with
2 our committee today?

3 ANTHONY GARCIA: Okay. If you would like, yes.
4 The names - let's see if I can run down the list.
5 I'll start with the team from the anthropology,
6 Dr. Tim White, Dr. Kent Lightfoot, and Dr. Ira
7 Jacknis, all three are either curators or staff
8 related to the museum. The other three members,
9 which joined the end of last year, is Professor Phil
10 Frickey from the Boalt Law School who is the Chair
11 of the committee and an expert in litigation on
12 Native American cases and also has extensive
13 experience in NAGPRA law. The last two is Karen
14 Biestman, who teaches in American studies and is a
15 Native American, and Joseph Myers, who teaches in
16 Native American studies and is also a lawyer and a
17 Native American. So those are the six members, plus
18 of course, the Director Jud King, who goes before
19 the committee as well as I do before the committee.

20 SONYA ATALAY: Thank you.

21 COLIN KIPPEN: Committee members, comments,
22 questions?

23 ERIC HEMENWAY: I have a quick question. You
24 mentioned consultation. How far does the university
25 take their consultation because from my personal

1 experience with museums, a lot of times they'll send
2 us a letter and they'll call that consultation when
3 in reality consultation is -

4 ANTHONY GARCIA: Yes, I'm very familiar with
5 this in the history of study - the history of how
6 consultation is interpreted, both at the Phoebe
7 Hearst and at other institutions. And I can tell
8 you that consultation to me is a real important part
9 of how we work with the tribes today since we have
10 complied with the law before this date. Now we meet
11 with tribes as often as we can in any way in which
12 they would want to meet with us. Some ask us to
13 come to their tribes. That's very difficult for me
14 to honor all of that because I have to cover
15 everywhere, but we do the best we can.

16 We invite them in. We invite them in
17 especially to become familiar with the collection
18 that they are going to be putting a claim in for.
19 And we try to engage them face to face if we can,
20 but we will carry on consultation if they so desire
21 by phone or by email. We do that a lot. We
22 continue it. We have not stopped and we are pushing
23 it. We go after tribes that we know are highly
24 interested in going after a claim from my studying
25 their past correspondence and we try to get into a

1 dialogue with them to find out why they have stopped
2 coming forth.

3 Some of them have their own issues because of
4 internal organizational change. They are a new
5 person that don't know what has gone on before or
6 it's because of things they've heard that they don't
7 understand about the museum. And because of those
8 kinds of comments it's been - some of them, it has
9 been hard for them to sit down with us, but after we
10 explain to them our position we find it's very, very
11 quickly changed and we do get into a dialogue.
12 We're trying - that's the biggest struggle we have.

13 SONYA ATALAY: I also have a further question,
14 which is just I know that U.C. Berkeley has quite a
15 large collection.

16 ANTHONY GARCIA: Yes, ma'am.

17 SONYA ATALAY: You probably know the numbers
18 much better than I do. My estimates are around
19 13,000 sets of human remains.

20 ANTHONY GARCIA: That's very close.

21 SONYA ATALAY: Most of those from my
22 understanding and looking at some of the data are
23 culturally unidentifiable. Is that correct?

24 ANTHONY GARCIA: That's correct. A large number
25 of them have been put into the category of

1 culturally unidentifiable and we are working with
2 tribes as a request and as we understand to change
3 those decisions that were made. In some cases I
4 think they were probably made not with good
5 scientific explanation, and we are changing them.

6 SONYA ATALAY: I think because of the - as we
7 were speaking about yesterday and the large numbers
8 that we're talking about here, I'll look forward to
9 hearing further in future meetings as to how things
10 are proceeding with these consultations.

11 ANTHONY GARCIA: I promise the next time I come
12 before the meeting I hope to have even new
13 information as to how we go into this direction
14 because I know this is the most sensitive area we
15 have. We have a very large number and it's - we
16 have learned - we are learning that we may have
17 hastily made those determinations and we're trying
18 to correct that.

19 SONYA ATALAY: That's - I think hopefully what
20 we'll see in future meetings is being able to use
21 U.C. Berkeley as a model of taking these large
22 collections and turning them from culturally
23 unidentifiable into things that eventually -
24 ancestral remains that go home to where they belong.
25 I hope that we'll be able to use your university as

1 a model for this, something that we can proud of.
2 So we'll be keeping a close eye on what happens and
3 look forward to your future reports. Thank you for
4 coming forward and talking about this.

5 DAN MONROE: Just a quick question. I'd applaud
6 all the progress that is being made at U.C. Berkeley
7 at the Phoebe Hearst Museum. It's great to see the
8 kinds of changes that are occurring there. In terms
9 of the process for this transition from
10 classification as CUI to culturally identified, is
11 that being spurred by specifically requests by
12 tribes or is there a systematic effort to go back
13 and look at those designations within the museum
14 itself?

15 ANTHONY GARCIA: Actually two-fold, yes. Tribes
16 are especially the ones who are coming forth asking
17 that to be changed. They're making special
18 requests. Some don't understand it enough and want
19 to sit down and they explain it out and we determine
20 this is what they're trying to do, and we work with
21 them quite often that way. We are ourselves going
22 after areas, very large areas that we believed were
23 identified as culturally unidentifiable and realized
24 that, oh no, this is quite wrong and it was in haste
25 in the inventories and we're right now working - we

1 have archaeologists and other scientists working
2 right now on this to change one very large area
3 which we hope to report in some future months that
4 this has been completely turned around. It won't be
5 all - it won't be all changed to culturally
6 affiliated. There still will be some that will be
7 unidentifiable but it won't be anything like it was
8 reported originally.

9 DAN MONROE: Terrific. Thank you.

10 SONYA ATALAY: A further follow-up on that is
11 I'm wondering if there are plans then for those
12 remains that aren't determined to be identifiable to
13 do dispositions as we've seen so successfully here
14 in this meeting yesterday, that those dispositions
15 could be done. You could come to some disposition
16 agreement with tribes. And also if you're
17 considering and are working with nonfederally
18 recognized groups as well because I know they can be
19 included in the process as long as they're working
20 with federally recognized tribes.

21 ANTHONY GARCIA: Yes, it just so happens we are
22 working with a very large collection for an area
23 where there is no recognized tribe. We're working
24 with a federally unrecognized tribe right now to try
25 to change or try to find a process. We've been

1 meeting with them for now three months. We've
2 looked at the collection. We've determined that
3 they have a very good case to try to get these
4 remains and objects returned to them. There is, of
5 course, the process of having another tribe that is
6 recognized do it for them. This tribe doesn't want
7 to do it that way. They want the Hearst Museum with
8 them in a partnership to get it repatriated to them,
9 and we're trying to use partly as muscle to get this
10 accomplished is that they are before the
11 acknowledgements right now. They're on a list of
12 waiting tribes to be acknowledged. They're very
13 high on the list. They met all the criteria for
14 acknowledgement as a tribe, the membership and
15 everything else they're supposed to have. All
16 they're waiting for is their chance to go before
17 that organization to become a tribe. Meanwhile, we
18 would like to not wait because that could be many
19 years down the road. The museum is actively right
20 now, the Director and myself, working with this
21 tribe to get these objects in some way returned to
22 them.

23 SONYA ATALAY: Great. Wonderful progress. I
24 look forward to hearing more. Thank you.

25 COLIN KIPPEN: Thank you.

1 ANTHONY GARCIA: Thank you very much.

2 DAN MONROE: Thank you.

3 COLIN KIPPEN: Mr. Tarler.

4 DAVID TARLER: Mr. Chairman, I'd like to call
5 Frank Wozniak, the National NAGPRA Coordinator for
6 the USDA Forest Service.

7 COLIN KIPPEN: Good morning.

8 **PUBLIC COMMENT - FRANK WOZNIAK**

9 FRANK WOZNIAK: Good morning. Mr. Chairman,
10 members of the committee, I want to thank you for
11 this opportunity to make a brief presentation to
12 you. I am the National NAGPRA Coordinator for the
13 USDA Forest Service and have been in that capacity
14 since early 2001. However, before that and still
15 continuing, I am the NAGPRA Coordinator for the
16 Southwestern Region of the USDA Forest Service and
17 have held that position since September of 1992.
18 That appointment indicates the seriousness with
19 which the Forest Service treats NAGPRA and has from
20 the very beginning of this process.

21 Today, I want to mention three particular
22 items. First of all I want to mention the 2008 farm
23 bill. We're not talking about farm subsidies or
24 other things of that sort. What it is, there's a
25 provision in the 2008 farm bill that gives formal

1 Congressional authorization to the Forest Service to
2 rebury Native American human remains and funerary
3 objects on Forest Service land where those remains
4 have come from sites on Forest Service land or from
5 sites that are adjacent to Forest Service lands.
6 And there is a legal definition of adjacency and
7 everything which we don't need to go into unless you
8 have a question about that.

9 Now, this is - these reburials are permitted
10 where the culturally affiliated tribe or tribes
11 request that this occur, and should point out that
12 this is a formal Congressional authorization.
13 However, under its discretionary authorities in land
14 management, the Forest Service has permitted and has
15 carried out reburials of Native American human
16 remains from Forest Service lands since the summer
17 of 1991, so very early in the process we had in
18 place at least an informal policy that permitted
19 that. So there is the farm bill, and if you have
20 questions I'm more than happy to answer about that.

21 Secondly, I wanted to give you just a brief
22 update on NAGPRA implementation by the Forest
23 Service for Fiscal Year 2009. By the end of
24 September 2009, the end of the formal fiscal year,
25 the Forest Service will have repatriated and

1 provided for the reburials of 305 - 301 sets of
2 Native American human remains, 1,826 associated
3 funerary objects, and 80 unassociated funerary
4 objects. These repatriations and reburials will
5 have occurred under three separate repatriations.
6 The repatriations will be in one instance to the
7 Pueblo of Jemez who are the sole cultural
8 affiliates, in another instance to the Pueblo of
9 Acoma, the Hopi Tribe, and the Pueblo of Zuni, who
10 are the cultural affiliates, and in the final
11 instance to the Tohono O'odham Nation as the lead
12 for the O'odham peoples in Southern and Central
13 Arizona.

14 Finally, I wanted to point out a problem with
15 the culturally unidentifiable database. In late
16 March, I discovered that the numbers of Native
17 American human remains and associated funerary
18 objects that are listed in that database had
19 suddenly and precipitously nearly doubled from what
20 we had reported to the Park Service and which we had
21 reviewed two years prior to that. I had also kept
22 an awareness of that database through frequent
23 consultations with it in the time between our formal
24 review of the database for the Forest Service and
25 March of 2009.

1 For us, this is a very serious problem. How
2 suddenly we could have twice the number of
3 culturally unidentifiable human remains than we had
4 reported. We have brought this to the attention of
5 the National NAGPRA Program and they have indicated
6 that they will be reviewing this. However, I think
7 that the review will not be a simple one because
8 I've gone through the entries for National Forests
9 in that database and it's not a simple replication
10 of records. It's more complicated than that, and
11 therefore I believe that the National NAGPRA Program
12 will have to do an item-by - line-by-line review of
13 the entire database to find out where those
14 duplications have occurred and hopefully identify
15 why, but at least to have identified where they have
16 occurred. I think that because of that - this
17 episode, that the problem might lie not only in the
18 records that they are maintained therefore that
19 database for the Forest Service, but for those
20 records for other entities, other Federal agencies,
21 museums, etcetera. And other parties might be
22 advised - find it advisable to review that database
23 to identify if that has occurred in their records.

24 With that I'm finished and would be more than
25 happy to entertain any questions or comments that

1 you might have.

2 COLIN KIPPEN: Thank you, Mr. Wozniak.

3 Do we have any comments or questions?

4 DAN MONROE: Just a quick question, are you
5 asserting that the results or that the reason for
6 the doubling in CUI is a result of duplications that
7 have been somehow inserted or is there some other
8 cause?

9 FRANK WOZNIAK: It appears that it's a somewhat
10 complex pattern of duplications. Initially, I
11 thought it was just a simple duplication of records
12 where you simply - you had listed - for one forest
13 you had three listings of culturally unidentifiable
14 remains with three, one and two - you know, three
15 sets in one, one in another, and two in another.
16 And then they simply doubled it and you had the same
17 entry in the same order. However, it's more complex
18 than that because I had to go systematically through
19 it, checking off one against the other and
20 everything of that sort, and so it isn't just you
21 took the record and it happened to be doubled in the
22 same order in which it was in the list - in the
23 database, but it appears to be - there's a certain
24 randomness in which the pattern occurs. But it
25 appears to be pretty much a doubling, though not

1 completely. There are some instances where I can't
2 figure out what really happened, and it would really
3 take some person who's a professional at IT to
4 figure it all out. But I thought I should bring it
5 to your attention because it could be a problem
6 particularly given the numbers that we're talking
7 about in terms of culturally unidentifiable. You
8 know, if we're talking about a hundred thousand or
9 more, maybe it's a hundred thousand or maybe it's
10 only fifty thousand or maybe it's more than a
11 hundred thousand. At this state of the record
12 regarding Forest Service we have an approximate
13 doubling of the numbers.

14 DAN MONROE: So David, the National NAGPRA
15 Office is looking into this, is that correct?

16 DAVID TARLER: Well, Mr. Monroe, I'm not
17 familiar with the issue. I'm sure it was brought to
18 the attention of both Sherry Hutt and to Jaime
19 Lavallee, our notice coordinator.

20 FRANK WOZNIAK: Yes, that's correct.

21 DAVID TARLER: I know it's been said many times
22 before but I'll repeat again, we act in a
23 ministerial capacity, and in compiling this database
24 we take the information that is provided to us.

25 DAN MONROE: Yeah, I understand. So the

1 responsibility to sort this out lies with what
2 agency, Forest Service?

3 FRANK WOZNIAK: Well, we have reported it to - I
4 reported it to Jaime first of all, Jaime Lavallee
5 first of all, and then secondly to Sherry Hutt. And
6 they said it would be looked into and that they were
7 broadly aware that this problem had been occurring
8 and that it would be addressed at some point in
9 time. I'm not sure when that will occur, but given
10 the seriousness of the matter of culturally
11 unidentifiable and the need of this committee to
12 address that issue in a formal and deliberative
13 fashion, I felt I had an obligation to mention that
14 in this case.

15 DAN MONROE: But it sounds quickly as if this is
16 the situation, the NAGPRA office is simply compiling
17 these inventories, and it's not going to be the
18 National NAGPRA Office that actually sorts out
19 what's happened with the Forest Service inventory,
20 correct?

21 DAVID TARLER: Not with respect to the
22 inventories, but certainly with respect to the
23 numbers that we report. That we will sort out.

24 DAN MONROE: Yeah, but this sounds like it's
25 shaping out as a classical falls-between-the-crack

1 situation.

2 FRANK WOZNIAK: No, it's not going to because
3 we're not going to let it fall between the cracks,
4 on behalf - on the part of the agency that I work
5 for.

6 DAN MONROE: Good.

7 FRANK WOZNIAK: We intend to keep on top of it,
8 and you know, we - doubling the numbers presents an
9 image that we don't care to have.

10 DAN MONROE: Good.

11 COLIN KIPPEN: Mr. Wozniak, I want to thank you
12 for your testimony here today. I too am really
13 concerned about the database, and it's for a broader
14 policy reason. Obviously we are concerned with the
15 number of culturally unidentified individuals,
16 humans, that are in that database, but the other -
17 the other bigger sort of administrative issue and
18 policy issue for us is that we're supposed to be
19 looking into policy issues that are based upon data
20 and information and our ability to focus and make
21 any kind of recommendations about anything is really
22 dependant upon a set of data, a fund of data, that
23 we can have some confidence in as we then begin to
24 try to sort out, and I think as Mr. Monroe said, the
25 issues and things and problems that may be falling

1 in the cracks. And we - I really sympathize with
2 the situation that National NAGPRA is in because
3 they are the receptacle for what each of the
4 individual line agencies do and report. And yet,
5 you know, we - the place where all of that is
6 expressed is through the National Park Service,
7 National NAGPRA Office, and so they can only be as
8 accurate or credible as each of the line agencies
9 that report to them, and so I think this is a
10 constant theme.

11 I have great hope for the kinds of work that
12 the Government Accountability Office may have to
13 help us better understand sort of how this system or
14 lack of one in total works, so that we can
15 understand better how to suggest policy changes and
16 policy improvements, and also really to allow the
17 community - and when I say community I mean the
18 tribal members, museums, Federal agencies, everyone
19 who cares about these issues - to be able to make
20 decisions and to be able to have some confidence
21 that our recommendations and our findings are based
22 on credible information. Because without that, it's
23 just arbitrary and it's capricious, and we may as
24 well just disband this organization if we can't get
25 the data to be able to really look into, you know,

1 what things maybe need to be changed or what things
2 need to be amplified to make it work well. So I
3 really appreciate your comments. It is a bit of a
4 courageous step to come forward and to say we notice
5 a doubling and we're not really sure why, and we're
6 looking into that and we care about that. I think
7 that's a very positive statement.

8 FRANK WOZNIAK: Thank you, Mr. Chairman.

9 DAN MONROE: Thank you very much.

10 FRANK WOZNIAK: Could I say just one further
11 thing along those lines? It appears that this whole
12 issue arose from the update of the database that was
13 done in March, and you know, there seems to have
14 been some aberration that occurred or aberrations
15 that occurred during that update. And we became
16 aware of it because the numbers for my agency were
17 correct as of the end of January 2009. In the end
18 of March of 2009, we had this doubling, shall we
19 say, and therefore it occurred in there and it was
20 suggested to me by the National NAGPRA Program that
21 it most probably was during that update process that
22 there occurred this pattern and everything of that
23 sort.

24 DAN MONROE: Who updated?

25 FRANK WOZNIAK: What?

1 DAN MONROE: Who did the update?

2 FRANK WOZNIAK: The National NAGPRA Program
3 updated its CUI database in March, and you'll notice
4 on the webpage it says, you know, updated as of
5 March 2009. I noticed that and that's why I thought
6 that that's why that might have occurred. Anyway,
7 so they're investigating it but we're very concerned
8 that our numbers be correct in that database. I
9 mean, we know what the numbers are. We have them,
10 but if it's not correct in the national database
11 then issues can occur that we prefer not occur.

12 COLIN KIPPEN: Mr. Tarler, do you have any
13 information that there are other Federal line
14 agencies that may be experiencing similar trends
15 with their data?

16 DAVID TARLER: Mr. Chairman, I have no knowledge
17 whatsoever. This is not an area for which I have
18 any responsibility.

19 COLIN KIPPEN: I would like to ask that at the
20 next NAGPRA meeting that there be a discussion just
21 about this point, because we normally receive an
22 update on the database and I would just like in that
23 update that we address any agency issues that -
24 other agency - line agencies issues that may have
25 arisen, and I would particularly like to just hear a

1 little bit or have discussed with the committee
2 what's going on with respect to the Forest Service.
3 Again, I think it's something that we need to keep
4 our finger on. It may be just part of a trend.
5 There may be other agencies that may be affected as
6 well, and again, we - I'm not blaming anyone here.

7 This is very complicated. Again, all the line
8 agencies report. All of that information comes into
9 a big pot and it's the National Park Service that is
10 supposed to make sense of it and put it onto a
11 website. So that - this process I think is - has
12 numerous points at which unintended error can enter
13 into the process. So I - and the better we are at
14 being able to describe that process in a clear way
15 the better able we will be to address it and also to
16 have some confidence that our numbers are credible
17 and that our picture is accurate of the status quo.
18 So thank you very much again.

19 FRANK WOZKIAK: Exactly. Mr. Chairman, I can
20 assure you that I will be there at the meeting in
21 Sarasota, and I will have available with me the
22 breakdown forest by forest on that and can point out
23 - if those errors persist, can point out where those
24 errors lie, at least on paper. I don't - have no
25 idea where they lie within the database, but at

1 least on paper I can do that for you and be more
2 than happy to do so.

3 COLIN KIPPEN: Thank you.

4 DAN MONROE: Thank you.

5 FRANK WOZNIAK: Thank you very much.

6 COLIN KIPPEN: Mr. Tarler.

7 DAVID TARLER: Mr. Chairman, I'd like to call
8 Art Hutchinson, Superintendent of Great Sand Dunes
9 National Park.

10 **PUBLIC COMMENT - ART HUTCHINSON/FRED BUNCH**

11 ART HUTCHINSON: Mr. Chairman, I'm Art
12 Hutchinson, the Superintendent of Great Sand Dunes
13 National Park. Thank you for this time. With me is
14 Fred Bunch, my Chief of Resource Management at the
15 same national park. The reason I would like to
16 discuss this with you today is to show you that
17 NAGPRA has so many positive and extremely rewarding
18 outcomes. During the - maybe a little bit of
19 history first. Great Sand Dunes National Park is
20 American's newest full national park, and that
21 happened in the process in 2000 to 2004. During
22 that expansion from being a national monument, we
23 inherited a lot of former ranchlands that many of
24 the sands that are part of this great formation of
25 sand dunes is out there, and in that were many of

1 these interdunal ponds, etcetera, which were rich
2 places for peoples for thousands of years. We have
3 sites that go back at least 10,000 years out there.
4 So there are plenty of opportunities for inadvertent
5 discoveries today, tomorrow, and in the past.

6 During the process of this - the NAGPRA work
7 that we were doing, I looked around this landscape
8 which is surrounded by 14,000 foot peaks and the Rio
9 Grande River runs through the middle of it, and said
10 other Federal agencies have lands just like ours.
11 And we - from past experience I know that tribal
12 groups have a - it's hard to get to meetings, it's
13 expensive to do these consultations, why not do it
14 together. And so I called my line officer
15 counterparts from the Forest Service, the BLM, Fish
16 and Wildlife Service and Bureau of Reclamation and
17 said, we are going to consult. We've been
18 consulting before in a smaller way but we are going
19 to take this on full bore here and would you like to
20 participate. And after some discussions they said
21 yes. And this included tribes that had not even
22 probably thought about the San Luis Valley before
23 and we sent out over 70-some letters. We called
24 many people and we have 12 active tribes now who
25 have signed or are in the process of signing an MOU

1 with these 4 or 5 Federal agencies dealing with
2 future inadvertent discoveries.

3 And the best part of it is it is an ongoing
4 dialogue. We now have updated databases. We have
5 phone numbers, fax. People have come to the valley
6 for consultations. We have gone into New Mexico.
7 Ohkay Owingeh Pueblo sponsored the third of our
8 consultations. And I believe at this point we have
9 one of the better examples of how NAGPRA has led to
10 a very proactive stance by all groups to get
11 together and discuss everything from inadvertent
12 discoveries to resources that may be scarce on
13 tribal lands that one of us in agencies can
14 participate in.

15 So I would just like to point out that NAGPRA
16 has so many positive spinoffs. Yes, it's a lot of
17 work, but I think overall the tribes are saving
18 time, money. We are saving time and money as
19 Federal agencies by working together on a very
20 positive experience. So the San Luis Valley, we are
21 under the Service First authority, but we don't need
22 that. We just need that ability to work together
23 and the willingness to work together. And with that
24 I'm going to turn over this last bit to Fred to kind
25 of add a couple of points.

1 COLIN KIPPEN: Good morning.

2 FRED BUNCH: Good morning, Mr. Chairman. This
3 document is intended to be a living document and
4 that all the signatories on both the Federal side
5 and the tribal side have a chance for review and to
6 add tribal members or tribes as desired. We are
7 constantly reaching out to the whole area and all
8 the affiliated peoples in that region.

9 ART HUTCHINSON: And in the future, if there are
10 other areas of the country that want to look at this
11 particular MOU that we have in place, we would of
12 course probably consult first to make sure that
13 that's okay. We believe it's a very transparent
14 document that will work for many parts of the
15 country and hope that it's looked at as a model.
16 Thank you.

17 COLIN KIPPEN: Mr. Hutchinson, thank you. So I
18 take it what you're telling us is that you've
19 established an MOU process that's very broad-ranging
20 and comprehensive. How many - how many groups are
21 involved in that process?

22 ART HUTCHINSON: Right now there are 12 tribes
23 that are - could be part of this. We are of course
24 not requiring tribal signatures. All of the
25 representatives, the NAGPRA representatives at these

1 consultations have agreed to this. The language has
2 been agreed to, and now of course it's just finally
3 getting tribal signatures, proper ones on those. We
4 have waited purposely until after this process that
5 we have been here and I testified yesterday so that
6 we can now move forward and not confuse NAGPRA with
7 the future. But again, we hope that gave us this
8 proactive stance for all the Federal agencies and I
9 just want to emphasize that each one of the other
10 line officers is very enthusiastic about it. I
11 didn't have to you, you know, prod them into it.
12 They said this is the right thing to do. And again,
13 it works for this specific area because all the
14 tribes somehow or another have affiliation somewhere
15 in the distant or recent past to this valley.

16 COLIN KIPPEN: Are there any tribes that are not
17 involved in your process?

18 ART HUTCHINSON: Not in that particular area.
19 Probably - yesterday Arden Kucate was there and he's
20 from Pueblo of Zuni, which is quite a ways away.
21 The Hopi Tribe has sent back a couple of letters.
22 The Comanche Tribe has supported us in a couple of
23 areas, which are of course on the other side. There
24 are a few of the pueblo groups that have not, for
25 whatever reason, chosen to be involved, and it could

1 be specifically the Tewas who are more involved in
2 our valley than the other puebloan groups in New
3 Mexico. One thing that I also noticed that was very
4 positive was when Ohkay Owingeh Pueblo said we will
5 host the third of these, as the tribal
6 representation at that meeting went way up. So by
7 us traveling south of the New Mexico line there
8 certainly increased the participation.

9 Federal line officers have also - we've agreed
10 that we will now, the three or four of us will jump
11 in a car on an annual basis and go visit them as
12 well to continue this process. We now have tribes
13 that come up and ask for, for example, in the Great
14 Sand Dunes there are magnetite that's on the sand
15 that are used in Apache ceremonial painting. Last
16 year we were asked if we could find some deer meat
17 for one of the tribes that they did not have access
18 to, and I found a source for that through an
19 outfitter, and Fred and I drove it down for the
20 ceremony. So consultation goes many ways and it
21 takes, I guess, a lot of commitment but it's the
22 right thing to do.

23 COLIN KIPPEN: Thank you. Further questions?
24 Comments?

25 DAN MONROE: I'd just like to applaud you for

1 taking proactive steps and creating a really
2 terrific program. Great work. And we should do
3 everything we can to actually publicize this kind of
4 initiative, and I very, very much appreciate it.

5 ART HUTCHINSON: It was suggested that we bring
6 this up today. It wasn't our - it's the right
7 outcome and so thank you for giving us the time to
8 share that.

9 DAN MONROE: It's fantastic, and it's a great
10 park also.

11 ART HUTCHINSON: It is.

12 COLIN KIPPEN: Thank you.

13 ERIC HEMENWAY: Thank you.

14 COLIN KIPPEN: Mr. Tarler?

15 DAVID TARLER: Mr. Chairman, if Joe Brennan or
16 Helen Robbins are present and wish to make comment
17 then I invite them to do so. And if not, then that
18 concludes my list of people who've asked to make
19 public comment, and should you desire we can open
20 the floor to other public comment.

21 COLIN KIPPEN: I don't see - I would like to -
22 you've called for Joe Brennan or Helen Robbins.

23 DAVID TARLER: Yes, Mr. Chairman.

24 COLIN KIPPEN: And they don't appear to be
25 present. I would like to open it up at this time

1 for anyone who has comments to come forward and as
2 you come forward please just identify yourself for
3 the record. We're in the public comment phase and
4 we would like to hear from you.

5 Thank you and good morning.

6 **PUBLIC COMMENT - ROBIN WILSON**

7 ROBIN WILSON: Good morning. My name is Norma
8 Jean Robin Wilson. I just wanted to give you a
9 little bit of feedback on this weekend here in
10 Seattle. I attended the grants writing class, and
11 it was - I just want to say thank you to NAGPRA for
12 their outreach that they have done with NPI. And it
13 was also like - it was also an awareness on my part
14 as well to understand the people of Hawaii. There
15 were a number of people in the room, in the class,
16 in the grant writing class who were from Hawaii and
17 I did not really grasp the issues that were taking
18 place. So that was quite the networking
19 opportunity. So that was great, and so awareness
20 and learning is taking place.

21 I understand your next three meetings are in
22 the East Coast. I would ask that you consider that
23 one or two of them or partial of them be webcast
24 available for people who are on the West Coast. I
25 think it might be - it could be a test of some kind,

1 something to consider, you know, the number of
2 people who might join the webcast as a possibility
3 because the three will be on the East Coast.

4 And I understand with your next - especially
5 your next meeting in meeting with the panel that
6 you're going to attempt to develop and try to
7 communicate why there are so many culturally
8 unidentifiable remains, I think it might be - I
9 think that might be worthwhile for everyone to
10 understand rather than to have hunches why it's such
11 a large number. Some things to think about in
12 asking some questions of that panel may include
13 access. Access seems to be an issue left and right.
14 Now it's access to information, access to meeting
15 notes, access seems to be an issue that I hear in
16 Indian Country.

17 Another question to consider asking if you so
18 desire is transparency, is the museum transparent.
19 And I think one thing I learned over this weekend is
20 a survey. Has the - has the museum done a survey
21 with the tribal communities to see if they have
22 transparency.

23 I heard over - from you, Mr. Kippen, with the
24 dispositions about the template that you are using
25 now within the NAGPRA Review part. I'm wondering if

1 that is all considerable for it to go as a template
2 on the website so that people might be able to use
3 that for consultation purposes so that people can
4 have some movement in the consultation process
5 rather than an ah-ha moment because I'm sure that
6 ah-ha moment is pretty rough publically, personally
7 speaking.

8 Again, I'd like to thank Jan, Sangita, and
9 NAGPRA staff for the weekend. It was very
10 educational. I wish everyone on the Review
11 Committee. I enjoy the comments about the person
12 who is not here. It is a highly important weekend
13 in tribal community this weekend in recognizing
14 people who are not with us, and I thank you for your
15 time. I look forward to hearing more developments
16 with this process. Thanks.

17 COLIN KIPPEN: Thank you. Do we have any
18 comments, questions?

19 DAN MONROE: Thank you.

20 COLIN KIPPEN: I would like to say that I think
21 a couple of the things that were recommended by
22 Norma Jean Robin Wilson, our last witness, I think
23 are things that we should think about. The idea of
24 a webcast is something that we really haven't
25 thought about and considered, and I would like - I

1 would ask that Mr. DFO you just have a conversation
2 and provide us with some feedback about that
3 possibility.

4 The conversation about access to information is
5 really very, very appropriate. Every time we come
6 out and do these hearings, what we're always told
7 and in fact you should know that some of the members
8 themselves feel like the process that we go through
9 is rather stilted and is at times not easy for
10 people, especially lay people to understand. And
11 we're trying to figure out a way to do that better.
12 But we are an administrative agency and we have some
13 fence lines that we have to stay inside of, but we
14 understand the concern about access whether it be to
15 information or to notes.

16 We also understand this question about
17 transparency because a lot of times the decisions
18 are really hard to make, and if you don't have a
19 transparent process, then anything that comes out of
20 that decision-making process is going to be viewed
21 as not credible. So you've got to do everything you
22 can to make the process credible because the
23 decisions are really difficult to make.

24 And the final suggestion was about putting a
25 template on a website. The template that is being

1 used by the people who come forward for dispositions
2 and (portion of comment inaudible) most of my
3 professional life dealing with conflict and chaos
4 that one of the ways to get out of any ditch is a
5 process, is a fair process, and a template is a
6 great way to get out of any ditch, a template that
7 structures the things that people are going to talk
8 about. But the template needs to be fair and it
9 needs to be representative, and it can't simply just
10 be, you know, favoring one world view. It needs to
11 be something that is very holistic that people can
12 look at and say that works for me.

13 But I do know that templates are very, very
14 helpful because when you can't talk anymore and you
15 step back and have a conversation about how is it
16 we're going to make this decision, not what the
17 decision is going to be but how are we going to make
18 it, and what are the things that we'll know when
19 we've made the right decision? What are the
20 attributes of what a good decision will look like?
21 Once you start people thinking not about their
22 specific sort of positions but actually something
23 broader, you really move to that place where you're
24 able to move forward, and I've seen that happen time
25 and time again. When we can't talk anymore step

1 back and say, you know, if we were to make a right
2 decision, what would that look like? What would be
3 the attributes of it? And this template I think has
4 helped us to create that system. So I like the
5 suggestion about the template. Mr. Tarler, is that
6 - my understanding was the template was on the
7 website. Is it not on the website?

8 DAVID TARLER: The template for requesting
9 recommendations regarding agreements -

10 COLIN KIPPEN: Yes.

11 DAVID TARLER: - is on the website.

12 COLIN KIPPEN: It is on the website.

13 DAVID TARLER: Yes, it is.

14 COLIN KIPPEN: Okay. So I would - I would ask
15 Ms. Norma Jean Robin Wilson to please just come back
16 if you're still here and we can have a conversation
17 about how to get access to that.

18 I would also say that any other suggestions
19 anyone may have about processes and ways to improve
20 any of the work of NAGPRA, we welcome those
21 suggestions, because again when you're making really
22 difficult decisions, stepping back and asking what
23 does a righteous and a good decision look like is
24 really the key way to get people to not focus on the
25 immediate - what their individual perspectives are

1 but now to focus on what it will look like and be
2 when they are on the other side of having created a
3 good decision.

4 So Mr. Tarler, next witness? No more further
5 witnesses? Anyone want to come forward and speak?

6 It seems like we're at that moment where we're
7 about to be done here.

8 DAVID TARLER: Mr. Chairman?

9 COLIN KIPPEN: Yes.

10 DAVID TARLER: I would just like to comment that
11 prior to this meeting we did look into the
12 possibility of making it available telephonically,
13 and we believe that the cost was prohibitive and so
14 we weren't able to do that. But it is certainly
15 something that we would like to do and we will
16 continue to look into the various technological
17 means of making Review Committee meetings available
18 to a wider public.

19 DAN MONROE: I just suggest that we might
20 explore WebEx as a possibility for doing video
21 conferencing. That's very, very inexpensive, very
22 effective and easy to use. And you can get in touch
23 with me and I'll give you some information because
24 my institution is using it much more frequently, and
25 it would be a way at a minimum to assure that people

1 could very readily and easily from any computer sign
2 up and give testimony that everybody here could see.
3 It may also solve some of the other issues. I think
4 it would be very, very helpful to do that and we
5 should explore it. The telephonic connections are
6 actually extraordinarily difficult to follow and
7 quite not actually that effective, I don't think,
8 but we should continue to explore it. I think it's
9 a great idea.

10 **COMMENT - COLIN KIPPEN**

11 COLIN KIPPEN: Before we conclude and just for
12 those of you in the audience and for the staff, what
13 we normally will do is we'll just have some comments
14 at the end. I just want to queue up something, not
15 as part of my final comments, but just to say that -
16 and I need to say this so that it is on the record,
17 as you know there has been a change in the rules
18 that govern this body, and one of those changes is
19 that there is no quorum requirement. What that
20 means is that one person could be making decisions
21 that are substantial. And we have suggested that
22 that rule be changed and that's a very important
23 point.

24 I want to now just for the record indicate that
25 it is my - it is to my knowledge that there has been

1 some great difficulty at times with things like
2 arranging travel for our National NAGPRA committee
3 members, that there - I have talked with some of the
4 members and I know that some of them experienced
5 difficulty in getting - in being able to arrange the
6 travel to get to these meetings.

7 There has also been some difficulties with us
8 receiving reimbursement for our expenses. We would
9 prefer that they would hold these meetings at a
10 Motel 6 so that the amount of money we have to lay
11 out would be substantially less, but that's not the
12 way we proceed. So I personally have, you know,
13 expenses going back over a year and a half.

14 The reason I say this and the reason I want
15 this to be on the record is because these are all
16 things that affect the ability of people to come to
17 meetings, and when you have a requirement now that
18 there be no quorum, it is something that needs to be
19 addressed very - it needs to be addressed and taken
20 care of, so there is no possibility that people are
21 not attending because of administrative breakdowns.
22 And if there is an administrative breakdown, the
23 power of the committee and its ability to render
24 fair decisions in a way that people perceive as fair
25 will be undercut. And my intention as long as I'm

1 here, and I know it is the same of everyone that
2 sits on this committee, is that we have to protect
3 the process because by protecting the process we
4 protect the result, and if the process is viewed as
5 not fair, the result will be viewed as not fair.
6 And that is absolutely something we cannot allow to
7 happen.

8 So I am making this point on the record because
9 it may have an impact if we are not able to get our
10 members here, if we are not able to reimburse them
11 for their expenses, if we are not able to assure
12 that we will have a functioning committee because of
13 the fact that there is no quorum requirement
14 presently. So that's the only point I would like to
15 make for the record.

16 I want to also have the record reflect that I
17 have been - this issue has been explained. I
18 understand that part of the issue may be a change in
19 administrations, a change in process, all of the
20 resources that now exist going into stimulus
21 activity. Agencies are literally busy in ways
22 they've never been busy before. So I understand all
23 of that. I just wanted to make it a point that we
24 understand and we expect that there will be the
25 highest level of compliance by our - that we will

1 use the highest and best efforts to get our folks
2 here and to make sure that these administrative
3 matters are attended to because it may affect our
4 ability to get people to meetings and I think that's
5 important for us to do.

6 So I'd like to now call on Dan Monroe as we
7 leave and I'd like to just - I'd like him to give us
8 some of his closing comments or thoughts.

9 **CLOSING COMMENTS**

10 DAN MONROE: Well, first I'd like to thank the
11 NAGPRA Program staff and all of the folks that have
12 been involved with putting the program training and
13 all of the other activities together for their good
14 work. I would reiterate perhaps in a more direct
15 way that it's actually essential for members of the
16 Review Committee, especially those who don't have
17 institutional backing, to be paid in a timely manner
18 for the expenses out of pocket and I would hope that
19 that problem gets solved and also the travel issue
20 solved, and these are important administrative
21 matters that have been longstanding issues.

22 I also thank everyone who's participated for
23 your patience and for your willingness to come
24 forward and take part in this process to share your
25 ideas and your suggestions, your observations and

1 your criticisms, all of that's really essential for
2 this to work effectively. And finally, as always,
3 I'd like to honor and respect the spirit of
4 collaboration that works, notwithstanding the fact
5 that obviously there are friction points, but the
6 intent of NAGPRA in spirit is to address basic civil
7 rights, religious rights, and to create a balance
8 between those and other activities that pertain to
9 the creation of a culture and a society at large,
10 not only just within Native American tribes, that is
11 one that's based on honor and respect. And I thank
12 all of you for participating in that as well. And
13 would just end to say that we look forward to
14 continuing to do this work, to doing it with your
15 investment as well, and to make sure that this law,
16 which is really so vitally important, is implemented
17 in ways that fulfill its ambitions both in spirit
18 and in letter. Thank you all.

19 COLIN KIPPEN: Eric.

20 ERIC HEMENWAY: I'd like to say thank you for
21 everybody attending this meeting and for the
22 National NAGPRA Program and my fellow Review
23 Committee members that are left here. It's been
24 quite an experience for my first meeting. It was
25 getting - just getting a hang of presenting and

1 getting five minutes in and done, but now it's a
2 whole new relationship with the program and with the
3 committee members and it's a big change. And I can
4 see a lot of change going on right now with the -
5 you know, the law and NAGPRA and we've got new
6 committee members coming in. We have a new
7 committee chair. We have new laws. We have new
8 procedures, but I feel confident that we'll work
9 through all this change and to start doing real
10 productive work in the very near future.

11 And I always like to remind myself when things
12 get really complicated that the big picture is
13 Native American Graves Protection and Repatriation,
14 and what we want to do is repatriate and get what
15 needs to go back to the appropriate parties. And
16 also to protect these areas that these ancestors are
17 interred in. And I'd just like to say in my Native
18 language, (Native American language). That means I
19 will see you again later. We don't have a word for
20 goodbye. And I'll leave it at that.

21 COLIN KIPPEN: I want to thank both of the
22 members, Dan and Eric, for their comments. I want
23 to thank actually all of the members that we've
24 served on this committee with, some who have had to
25 leave because of travel requirements but also some

1 who are no longer on this committee who really
2 assisted us. This has not been easy work. And it
3 would be considerably difficult without the work of
4 David Tarler and Carla Mattix and Stephen Simpson,
5 our attorney, and Sherry Hutt, the Director of the
6 program, as well as Lesa Koscielski, I hope I didn't
7 slay your last name, but the National NAGPRA staff
8 who have come before us and who work with us and
9 allow us to be successful in what we do.

10 This may be my last meeting and, you know,
11 that's well and good and that's fine. I've
12 absolutely enjoyed coming here. I have learned and
13 grown as a person to be part of this process, and I
14 have learned different ways of understanding what it
15 means to respect and be sensitive to other peoples'
16 values and views and life paths. And it has not
17 been easy.

18 I look back and I think the White Mountain
19 Apache case that we decided, at least for me, was a
20 moment in the history of this committee which I
21 think I will probably never duplicate in terms of
22 the richness of that moment. We had seven people
23 coming to a united decision from seven very
24 different perspectives, and they did it, you know,
25 verbally on the record. It was for most of us a

1 free-form moment, and I don't think that I have ever
2 seen anything quite so eloquent or been involved
3 with anything quite so powerful in my life.

4 So to all of you here, I hope that you will
5 continue your involvement with National NAGPRA. I
6 hope you will tell us, let us know what's going on
7 in the field, and be involved in these proceedings.
8 We know that this is a difficult process to
9 administer. We know that for many of you,
10 especially for many of the tribal members, these
11 issues are very difficult to discuss, they're very
12 difficult to be a part of, and our process at times
13 I know seems very stilted and inappropriate. But it
14 is what it is, and we do the best that we can
15 because we do have fence lines within which we must
16 operate. And those fence lines we didn't create.
17 They're created by the national - by this Federal
18 legislation.

19 So I'd like to say *aloha* to all of you. I have
20 absolutely enjoyed being on the committee, and if I
21 am returning then that is fine. If I am not, then
22 whoever it is that takes my place, I hope you will
23 carry forward the work we're trying to accomplish,
24 and I know that you will. I'd like to now just turn
25 this over to Eric and ask him to please send us on

1 our way with a blessing. Thank you.

2 **CLOSING - ERIC HEMENWAY**

3 ERIC HEMENWAY: I'll just make this short and
4 wish everybody a safe journey and once again I say
5 *miigwetch*, that's thank you in my Native language,
6 (portion of comment inaudible). To the tribes who
7 are still occupying this area, I always remind
8 myself it's a small miracle that we as a Native
9 people are still occupying our aboriginal homes and
10 I like to always acknowledge wherever I go the First
11 Nations are the original home owners, so to speak,
12 of their lands, and I like to say *miigwetch* for all
13 those people who are putting us up here. *Miigwetch*.

14 COLIN KIPPEN: Thank you.

15 **MEETING ADJOURNED**

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